

Industry Guidance for FSA Banking Conduct of Business Sourcebook



The voice of banking
& financial services



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Legal status and disclaimer

The FSA has reviewed this Industry Guidance for aspects of retail banking and has confirmed that it will take it into account when exercising its regulatory functions. This Guidance is not mandatory and is not FSA Guidance. This FSA view cannot affect the rights of third parties.

In the event of any inconsistency between this Industry Guidance and the Banking Conduct of Business Sourcebook (BCOBS) or the FSA Principles for Businesses, the FSA rules take precedence.

This Guidance is voluntary and provides examples of minimum standards that firms can adopt to comply with certain requirements of BCOBS and the Principles for Businesses. It is not an exhaustive or definitive methodology for meeting the FSA's BCOBS rules or the Principles for Businesses. This Guidance is not intended to address other relevant legal obligations.

Firms are free to follow different or higher standards of practice to provide products and services but must always achieve compliance with the FSA Principles for Businesses and BCOBS.

The FSA has produced a customer-facing Moneymadeclear publication *Just the facts about your bank account*, which is available in bank branches and on the Moneymadeclear website.

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Section 1: Introduction

The FSA Banking Conduct of Business sourcebook (BCOBS) sets out the high-level rules and guidance by which the FSA regulates retail banking conduct of business. BCOBS applies to UK firms who are authorized to accept deposits in the UK from banking customers, and EEA firms passporting into the UK on a branch basis to carry on that activity.,

A banking customer is defined by BCOBS to be either:

- A consumer;
- A micro-enterprise¹; or
- A charity which has an annual income of less than £1 million;

A natural person acting in a capacity as a trustee is a banking customer if he is acting for purposes outside his trade, business or profession.

1.1 The role of Industry Guidance

Industry Guidance gives examples of ways that firms can achieve compliance with BCOBS and the FSA's Principles for Businesses. It is not mandatory or exhaustive. The Industry Guidance follows the format below throughout:

- Context* – an explanation of the purpose of the BCOBS chapter.
- Rule* – the relevant BCOBS provision*.
- Industry Guidance* – examples of ways in which compliance with the rules can be achieved.

* This Guidance only includes the BCOBS rules for which the industry considers it would be helpful to provide guidance. However, users of this guidance must comply with all of BCOBS as it relates to their business. The full BCOB Sourcebook is therefore provided as an annex to this document.

Firms regulated by the FSA must also comply with the FSA's Principles for Businesses. These outline the fundamental obligations of each regulated firm and where relevant they are referred to in this Industry Guidance.

This document is dynamic and the BBA, BSA and Payments Council will ensure that it remains up to date, in consultation with the FSA and consumer bodies as appropriate.

1.2 The relationship between BCOBS and the Payment Services Regulations (PSRs)

The PSRs regime implements the EU Payment Services Directive in the UK. The FSA is the main competent authority for monitoring and enforcing the regulations in the UK. Its approach to the regime is outlined at <http://www.fsa.gov.uk/Pages/About/What/International/psd/>

The PSRs include conduct of business rules for payment services. This means that retail deposit taking products with a payment function, such as current accounts and relevant instant access savings accounts and payment transactions on other accounts, are subject to rules in the PSRs and/or BCOBS, depending upon the service and activity concerned

FSA confirmed Industry Guidance has to relate to the FSA rule under which it sits and be consistent with any relevant FSA guidance. This document does not therefore include guidance on compliance with the PSRs. Some of the rules in BCOBS apply to areas of retail banking conduct of business that are not covered by the Payment Services Directive. In the case of a payment service, therefore, some activities or dealings in relation to that service may be governed by the PSRs while other activities or dealings in relation to that service may be subject to the rules in BCOBS. For further information on this, firms are advised to refer to Chapter 1 of BCOBS on the general application rule.

For the avoidance of doubt, this Guidance only applies where BCOBS applies, as set out under the General Application rule BCOBS 1.1. BCOBS applies to the extent that this would not be inconsistent with the provisions of the Payment Services Directive that harmonise conduct of business requirements in relation to payment services.

¹ A micro-enterprise is defined as a business that employs fewer than 10 persons and has a turnover or annual balance sheet that does not exceed €2 million. Further information about this definition can be found on the EU Commission's website at http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm

Section 2: Communications with banking customers and financial promotions

2.1 Introduction

Chapter 2 of BCOBS sets out the rules and guidance applying to financial promotions and to communications with banking customers both pre and post sale i.e. for the lifetime of the relationship between the firm and the customer.

This chapter applies to all retail deposit taking activities, including those products and services where Parts 5 and 6 of the PSRs apply.

For structured deposits, cash deposit ISAs and cash deposit Child Trust Funds, additional rules are set out in the FSA Conduct of Business Sourcebook

Firms must always ensure that **communications and financial promotions are fair, clear and not misleading**.

Relevant BCOBS rules and guidance

2.1 Purpose and Application: Who and what?

2.1.1 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. This chapter reinforces these requirements by requiring a *firm* to pay regard to the information needs of *banking customers* when communicating with, or making a *financial promotion* to, them and to communicate information in a way that is clear, fair and not misleading.

2.1.2 R In addition to the general application *rule* (BCOBS 1.1.1R), this chapter applies to the *communication*, or *approval for communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *retail banking service* unless it can lawfully be *communicated* by an *unauthorised person* without *approval*.

2.1.3 R This chapter applies to a *firm*:

- (1) communicating with a *banking customer* in relation to *accepting deposits*;
- (2) *communicating a financial promotion* that is not an *excluded communication*; or
- (3) *approving a financial promotion*.

2.2 The fair, clear and not misleading rule

2.2.1 R A *firm* must take reasonable steps to ensure that a *communication* or a *financial promotion* is fair, clear and not misleading.

2.2 Fair, clear and not misleading

To ensure that a financial promotion or communication is fair, clear and not misleading firms should consider:

- who it is being aimed at;
- the channel by which it is being made;
- the particular features of the product or service (i.e. main benefits, risks, limitations, complexity of product, conditions and duration of the product/service);
- the level or depth of the information provided; and
- the actions it seeks to elicit.

For example:

- Information must be presented in a way that is likely to be understood by the average member of the audience. So communications to consumers may highlight different information than those to a micro-enterprise because of the likely different needs and priorities of the intended audience.
- Additional care should be taken when aiming communications at potentially vulnerable consumers.
- A high-level financial promotion that implies or expressly seeks further investigation from the consumer may provide less-detailed information. However each financial promotion should still provide balanced and sufficient information on a standalone basis.

Relevant BCOBS rules

2.3.1 R A *firm* must ensure that each communication made to a *banking customer* and each *financial promotion communicated or approved by the firm*:

- (1) includes the name of the *firm*;
- (2) is accurate and, in particular, does not emphasise any potential benefits of a *retail banking service* without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (4) does not disguise, diminish or obscure important information, statements or warnings.

2.3.7 R If a communication or a *financial promotion* compares a *retail banking service* with one or more other *retail banking service* (whether or not provided by the *firm*), the *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way.

2.3.8 R If a communication or a *financial promotion* in relation to a *retail banking service* refers to a particular tax treatment or rate of interest payable, a *firm* must ensure that a prominent statement that the tax treatment or the rate of interest payable:

- (1) depends on the individual circumstances of each *banking customer* and may be subject to change in the future.
- (2) may be subject to change in the future:

Is either included in that communication or *financial promotion*, or provided to the *banking customer* on paper or in another *durable medium* in good time before the *banking customer* is bound by the contract for that *retail banking service*.

2.3 Additional information for savings products

AER

Firms may find it useful to refer to BBA/BSA guidance on ways in which AER can be calculated and included in financial promotions for savings accounts, cash ISAs, cash CTFs and structured deposits. The Code of Conduct for the Advertising of Interest Bearing Accounts² can be found at <http://www.bba.org.uk/AERcode>.

Summary box

When presenting key product information for savings accounts in written or online promotional material, firms can where appropriate use a summary box format³.

The aim of the summary box is to provide customers with a consistent and succinct summary of the key product features for the product being promoted. This should enable customers to compare different products more easily.

In specialist customer segments such as micro-enterprises and private banking a summary box may not be appropriate because, for example, key product features may be determined on a personalised basis.

Further information on the summary box can be found at Annex A.

² The Code of Conduct for the Advertising of Interest Bearing Accounts has not been confirmed by the FSA

³ Annex A provides further information on when it may be appropriate to use a summary box format.

Section 3: Distance communications

Chapter 3 of BCOBS includes the rules and guidance applying to distance marketing communications made from the UK to consumers in the UK or in another EEA country.

These rules derive from the Distance Marketing Directive and are listed under Annex 1R of the full BCOBS sourcebook, which can be found at Annex B.

This chapter applies to all retail deposit taking activities. However, for those products and services where Parts 5 and 6 of the PSRs apply, firms are only required - when marketing at a distance - to provide some of the information required by the distance marketing disclosure rules. This modification to the rules is set out in more detail in BCOBS 3.1.2R (2) and can be found at Annex B.

Relevant BCOBS rule

Application

3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

The Distance Marketing Directive only applies to consumers. Firms are therefore not required to apply these standards to marketing communications made to micro-enterprises from a distance, although they may choose to do so.

Section 4: Information to be communicated to banking customers

4.1 Introduction

This chapter of Industry Guidance applies only to retail banking services where Parts 5 and 6 of the PSRs do not apply.

Chapter 4 of BCOBS sets out rules and guidance relating to information for banking customers during each stage of their relationship with the firm, i.e. pre-sale, on entry into a contract and during the life of the product or service.

As per Chapter 2 of BCOBS, all communications must be fair, clear and not misleading.

Relevant BCOBS rule

4.1.1 R A firm must provide or make available to a *banking customer* appropriate information about a *retail banking service* and any *deposit* made in relation to that *retail banking service*:

- (1) in good time;
- (2) in an appropriate medium; and
- (3) in easily understandable language and in a clear and comprehensible form;

so that the *banking customer* can make decisions on an informed basis.

4.2 Enabling customers to make informed decisions

4.2.1 General

The terms 'provide' and 'make available' are used in Chapter 4 and mean:

- *Provide*: to send or to give information directly to the customer.
- *Make available*: information is available to obtain by the customer.

Appropriate information should be provided or made available to customers in good time to allow them to make informed decisions.

In determining whether information is provided or made available firms should consider:

- The type of information that is being presented and its importance to the decision-making process;
- The actions the information might elicit from the customer;
- The channels by which the information is accessible; and
- The passage of time, if any, since the information was last provided or made available.

Firms can provide or make information available through a number of channels e.g. in branch, by post, by email, by internet, by telephone or by text message. Where information is provided by firms it must be in a durable medium.

Information should be presented in plain language and should wherever possible avoid the use of technical or legal terms.

4.2.2 Pre-sale information

Pre-sale information (not financial promotions) for products and services should, if appropriate, make reference to the availability of similar products and services offered by the firm that the customer may be interested in. For example, if a firm has a brochure for one of its deposit accounts it would be appropriate for the brochure to make reference to the availability of the firm's other similar deposit accounts.

Firms are not required to provide information about other products or services where the customer has identified the product that interests them and has expressly confirmed that they do not want to receive information about other similar products.

4.2.3 Current accounts

If a customer is interested in applying for a current account, in addition to the information that must be provided under the PSRs, firms should provide or make available pre-sale information where Parts 5 and 6 of the PSRs do not apply, e.g.:

- that a chequebook is provided (if applicable) and how cheque clearing works;
- whether, during application, a check will be made with a credit reference agency and if that check will be recorded as a full search.

If a firm provides front of house literature for their personal current account range, such literature should include reference to the availability of the firm's basic bank account (if they have one), and where to get further information. This reference might take the form of a separate piece of literature or text within an existing leaflet.

4.2.4 Additional information for Non-EEA currency current accounts

Current accounts where funds are held in a non-EEA currency are not covered by Parts 5 and 6 of the PSRs. Therefore, in addition to the guidance above, firms should provide customers who are interested in the account with information in good time before concluding the contract that includes (where relevant):

- how direct debits (including the direct debit guarantee), standing orders and other recurring transactions work and how to cancel them;
- how clearing works for automated payments;
- current interest rates, and how the customer will be informed about changes; and
- charges applying to the account and how the customer will be informed about changes.

4.2.5 Joint accounts for personal customers

Before entering into a contract, joint account customers should be informed of their rights and duties and the concept of joint and several liability. Customers should be told what this means if the relationship with the other joint account holder ends. They should be told for example, whether or not the account would be closed or whether or not one name could be removed.

Customers should be made aware that, unless the account mandate provides otherwise, in most cases one party to a joint account can withdraw the entire balance of the account alone.

If requested, firms should ensure that statements for current accounts get sent to each party to a joint account at different addresses.

In the case of building societies, it is especially important that the consequences of being first or second named on an account are explained, in relation to being a representative joint shareholding/borrowing member or trustee and the additional rights that brings (such as voting rights, etc.). A concise explanation of the rights of membership and the importance of picking the order the names are put on the account could form part of the product literature or application form. It is up to building societies to consider how best to communicate this information.

4.2.6 Joint accounts for micro-enterprise customers

When a business account is opened it is possible that the bank will need to deal with people in the business, other than just the business owner(s). Clearly the bank must also respect the business owner's right to confidentiality. To avoid doubt concerning whether or not the bank has authority to discuss matters with particular individuals, it is appropriate to ask customers for this authority at the outset. There is no obligation to confirm thereafter that the authority remains valid, although firms may wish to do so.

Partners in a partnership (and other joint signatories) should be properly informed of their rights and duties and the concept of joint and several liability. Specifically, what the implications are if the relationship with the other partner ends. They should be told for example, whether the account would be closed or whether one name could be removed. They should be told in what circumstances it might be necessary to freeze an account.

Customers should be made aware that, unless the account mandate provides otherwise, in most cases one party to a partnership account can withdraw the entire balance of the account alone. If requested, firms should tell all parties whether statements can be sent to each party to a partnership account at a different address, and whether there is a charge for doing this.

4.2.7 Basic Bank Accounts

Basic bank accounts are a useful tool in encouraging financial inclusion. There are a number of initiatives that firms offering basic accounts can follow to demonstrate they are treating customers fairly. These include:

- 1 If a customer wants to know about current account options and the firm assesses that a basic account is likely to be appropriate, then the firm should inform the customer that it offers a basic account and how it can be opened. Customers for whom a basic account might be appropriate include those:

- who express an interest in opening a money transmission (current) account which does not allow them to go overdrawn;
- whose main source of income appears to be state benefit;
- who are content to accept the limited money transmission functionality of a basic account (e.g. no cheque book).

- 2 If a customer asks to open a basic bank account and meets the firm's qualifying criteria for one, the firm should allow the customer to open one. This does not preclude other products being explained where it is appropriate.

However, if the customer has a history of fraud or is an undischarged bankrupt a firm is not bound to open an account. If the customer already holds a suitable account with the bank, a firm is not bound to open a basic bank account.

- 3 Wherever possible, firms should verify ID in branch for basic bank account applications. Customers should be told why this information is needed, what types of documents are acceptable and what checks may be carried out.

In determining the types of customer ID documents that are acceptable, firms should have regard to the FSA guidance in SYSC 6.3.7G (5), which provides that a firm should ensure that its ID procedures do not unreasonably deny potential customers from accessing services where they cannot reasonably be expected to produce detailed evidence of identity. Examples of non-standard types of ID that a firm might find acceptable are included in the JMLSG Part II: Sectoral Guidance Annex 1-I.

- 4 If a firm operates a central account-opening service, it should offer the option for certified copies of ID documents to be sent to the central unit rather than original documents. This helps to avoid customers being asked to send away important documents in order for firms to satisfy identification requirements under Money Laundering rules.

Where a firm has an arrangement with a third party, such as a housing association, to open basic bank accounts on the firm's behalf, the same approach to verifying ID should apply wherever possible.

- 5 If a firm needs to undertake a full credit check (rather than an enquiry) to verify identification and complete a customer's application for a basic account the firm should explain the implications of the check to the customer, including whether it could impact on the customer's future ability to apply for credit.

- 6 If a customer's application for a basic bank account is declined firms should explain the main reason why if asked by the customer to do so. However, if suspicion of fraud or money laundering is the reason for declining an application the firm is not obliged to inform the customer.

4.2.8 Savings accounts

A summary box format can be used to provide appropriate information about savings accounts in a consumer-friendly form for written and on-line pre-contract information. An example of the format and content of a summary box can be found at Appendix A.

In specialist customer segments such as micro-enterprises and private banking a summary box may not be appropriate because, for example, key product features may be determined on a personalised basis.

Information about interest rates (AERs) for savings accounts should be provided to customers in pre-sale material. Firms may wish to refer to the Code of Conduct for the Advertising of Interest Rates on Savings Accounts and should also tell customers how any changes to the AER during the lifetime of the product will be communicated to the customer. The Code can be found at <http://www.bba.org.uk/AERcode>⁴.

4.2.9 Cash ISAs and Child Trust Funds

The FSA's Conduct of Business rules (COBS 13 and COBS 14) prescribe the information that must be provided, in good time before a contract is concluded, to customers who are interested in a Cash ISA or Child Trust Fund. These rules can be found at <http://fsahandbook.info/FSA/html/handbook/COBS>

4.2.10 Charges

In good time before entering into a contract customers should be provided with details of the charges that apply for the normal running of the account. It would also be advisable to include a warning that the charges may change in the future.

Firms should also make available information about all their current charges for the account and can do so by, for example:

- a telephone helpline;
- the firm's website; or
- information available in branch.

Examples of charges for the normal running of a current account or savings account might include:

- monthly or other regular account fees;
- charges for processing cheques; and
- charges for unpaid or returned cheques.

Also, where it is relevant, customers should be provided with details of any charges for early withdrawal from a notice account or fixed-term account in good time before entering into the contract.

For micro-enterprise customers firms should, in addition to the above, provide details of what is included and excluded during any 'free banking' period that the bank offers.

There is no need at the account opening stage for details to be given of charges for services and products that customers are likely to use on an infrequent basis. However, firms may wish to do this, and as a minimum the customer should be told the charges for these services in good time before the service is given.

Examples of these types of service include:

- bankers' drafts;

⁴ The Code of Conduct for the Advertising of Interest Bearing Accounts has not been confirmed by the FSA

- stopped cheques; and
- special presentations.

4.2.11 Pre-notification of charges

Any charge that accumulates to the account i.e. that is rolled up to be charged at the end of a particular period, should be pre-notified by at least 14 days. The 14 days start from the date the notification is posted (whether by letter, statement notice or other durable medium), not from the date the notification is received.

Charges for services that are debited at the time a service is provided and where the customer has been notified in advance (for example, in the standard tariff) or where the customer is informed at the time the service is provided, are not subject to 14 days' notice before they are taken.

4.2.12 Changes to account charges

For normal retail banking services, any disadvantageous change to the level of charge associated with the service should be personally notified to the customer in a durable medium at least 30 days before the change comes into force. This period of advance notification should also apply to the introduction of any new charges for the normal running of the account.

Customers should be free to close or switch their account without additional charges or loss of interest for doing so for a period of at least 30 days after the date of notification of the disadvantageous change to the charge.

There is no need to provide notice to customers of reductions in charges but information about the reduction should be made available to customers.

Changes to charges for services or products that customers are likely to use on an infrequent basis do not have to be provided to customers in advance of the change but information about the change should be made available.

4.2.13 Cash machine charges

Customers should be told, in good time before they open their account and every time a debit card is re-issued, whether and what charges are made for ATM withdrawals, including the basis on which charges for withdrawals at ATMs abroad will be made.

Firms should have regard to, and comply with, the relevant LINK rules⁵ on ATM signage.

4.2.14 Chip and PIN

Where a firm has a system in place to allow customers to change their PIN, it should tell customers how to do so, for example in account opening packs or on PIN notifications.

Firms should also provide reference to alternatives to chip and PIN in materials accompanying card issuance and in any discussion with the customer where they express difficulty with using a PIN.

4.2.15 Interest rates

In good time before entering into a contract customers should be provided with details of the interest rates that apply to the account and how interest will be calculated (i.e. when calculated, compounded and charged). When quoted in the same document, debit and credit interest should be shown on a consistent basis, (for example, monthly or annually) so as to make it easier for customers to compare and choose whether to save or to repay debts.

⁵ The LINK rules have not been confirmed by the FSA. These are available at www.link.co.uk

Customers should be told how and where they can get up-to-date information on interest rates and how and when they will be notified of interest rate changes.

Firms should make available to customers information about their current interest rates and could do so, for example via:

- a telephone helpline;
- the firm's website; or
- information available in branch.

4.2.16 Changes to interest rates

In the period from 1 November 2009 to 1 May 2010, firms who previously subscribed to the Banking Code can continue to follow the relevant provisions of Section 4 of the Banking Code with regard to providing or making available information about interest rate changes.

From the 1st May 2010 firms should have regard to BCOBS 4.1.2G (3)(c) and (4) in interpreting and applying BCOBS 4.1.1R when exercising a power to make a material change to an interest rate to a customer's disadvantage.

Firms can follow the BCOBS Guidance referenced above prior to 1st May 2010 if they choose to do so.

4.2.17 Terms and conditions

Unless it is impracticable to do so, (as in the case where a banking customer wishes to conclude the purchase of a product during a telephone call, which is covered by BCOBS Chapter 3) customers should be provided with any product terms and conditions in a durable medium – and be encouraged to read them – in good time before entering into a contract.

All terms and conditions must be written in clear and intelligible language and should be easy for the average consumer to read. Terms and conditions for personal customers should meet the requirements of the Unfair Terms in Consumer Contracts Regulations.

Customers should be told before entering into a contract how they will be notified of changes to terms and conditions.

4.2.18 Changes to Terms and Conditions

If terms and conditions are changed to the customer's detriment customers should be given at least 30 days' personal notice in a durable medium before the change takes effect. At any time during the 60 days from the date of the notification, the customer should be free to close or switch their account without having to give any notice. Customers should also be free to close or switch accounts without any financial penalty.

Where a change to terms and conditions is not to the customer's disadvantage notification should be provided or made available within 30 days of the change. For example, by press advertisements, branch notices, information on the website, etc. The method chosen should be appropriate for the distribution channel. So, a branch notice would not be appropriate to advertise changes in the terms of an internet-only account. Firms should be prepared and able to justify why they believe a change is not to the customer's disadvantage.

If a firm makes a major change or a lot of minor changes to terms and conditions in any one year it should provide the customer with a summary of the changes and tell them where they can find a full copy of the terms and conditions.

Relevant BCOBS rule

4.2 Statements of account

4.2.1 R

(1) A *firm* must provide or make available to a banking customer on paper or in another *durable medium* such regular statements of account as are appropriate to the type of *retail banking service* provided, but need not do so where:

(a) the *firm* has provided a *banking customer* with a pass book or other document in a *durable medium* that records transactions in relation to the *retail banking service*;

(b) the *retail banking service* is provided at a distance by means of electronic equipment where the *banking customer* can access his account balance, view transactions and give instructions in relation to the *retail banking service* at a distance by such means;

(c) a *banking customer* has elected not to receive periodic statements of account, and for so long as such election is in force; or

d) it has reasonable grounds to believe that the *banking customer* is not resident at the address last known to it as the address of the *banking customer* and it is not practicable after reasonable inquiry to ascertain the *banking customer's* address.

(2) A *firm* must not charge for providing information which is required to be provided by (1).

(3) A *firm* must provide a *banking customer* with a true copy of any statement of account provided to him under (1) on paper or in another *durable medium* within a reasonable period of time following a request to that effect made by or on his behalf.

(4) A *firm* and a *banking customer* may agree on a charge for:

(a) providing a copy of a statement of account under (3); or

(b) providing statements of account more frequently than required by (1);

at the request of the *banking customer*. Any such charge must reasonably correspond to the *firm's* actual costs.

4.3 Statements of Account

Periodic statements must be provided or made available to customers in a durable medium for all deposit-based accounts unless clearly inappropriate, as outlined in BCOBS 4.2.1R (1).

Statements should continue to be provided or made available even when the account is inactive unless previous statements have been returned and it has not been possible to ascertain a new address after reasonable inquiry, or the account has been made dormant. Although customers may ask for more frequent statements, there is no requirement for firms to provide such a service and, if they do, a charge may be agreed with the customer which reasonably corresponds to the firm's actual costs.

4.4 Providing a copy of a statement

Under the FSA's SYSC rules, guidance at SYSC 9.1.5G advises that firms should retain the records required to produce statements of account for as long as is relevant for the purposes for which they were created.

Section 5: Post sale requirements

5.1 Introduction

Chapter 5 of BCOBS sets out rules relating to the way in which a firm must treat a customer after they enter into a contract for a product or service. Firms must act promptly, fairly and efficiently when providing retail banking services.

The way that firms deal with customers post sale is important in achieving the desired outcomes for Treating Customers Fairly under FSA's Principle 6. In particular firms should have regard to outcome 5:

“Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.”

As per Chapter 2 of BCOBS, all information provided to customers post sale must be fair, clear and not misleading.

Relevant BCOBS rule

5.1.1 R A firm must provide a service in relation to a *retail banking service* which is prompt, efficient and fair to a *banking customer* and which has regard to any communications or *financial promotion* made by the firm to the *banking customer* from time to time.

5.2 Completing the opening process for a basic bank account

A basic bank account should take no longer than 10 working days to become operational. The 10 working days are counted from the date the customer's application is completed and approved, i.e. once any necessary identification and address validation checks have been completed. 'Operational' means the ability to pay into and make withdrawals from the account (i.e. via a branch counter or an ATM).

5.3 Moving a consumer from a free current account to a fee-based account

Firms can offer customers the opportunity to move their current account from a "free if in credit" account to a fee-paying account. Information about the new account should be provided to the customer, in accordance with the applicable regulatory requirements and relevant paragraphs of Section 4 of this Guidance, before the customer is asked to respond to the offer.

A move should not take place unless the customer gives their express consent or it is the firm's intention to move all customers on the previously free account to a fee-paying current account.

5.4 Closing a customer's account

A firm should not close a customer's account without giving the customer at least 30 days' notice, unless there are exceptional circumstances. These might include a legal obligation to close the account or threatening or abusive behaviour by the customer towards staff.

Firms can respond to a bankruptcy notice by immediately closing an account without notice if they feel this is necessary. Similarly, they may respond to a request by a receiver in bankruptcy to close an account and send the funds to the receiver under his powers.

Firms should not close an account, or threaten to do so, in response to a non-vexatious customer complaint, so long as the customer is not also acting in a manner that might otherwise lead to account closure (see examples above).

5.5 Branch availability or closure

If a firm plans to close or move a branch, customers should be notified at least 12 weeks beforehand and told about how the firm will continue to provide retail banking services. This includes providing micro-enterprise customers with information on any inter-bank agency agreements that exist.

This relates to permanent closure, not temporary closures (e.g., due to branch refits). This does not apply where branches merge and are very close together (e.g. in the same or adjacent streets) or where a branch relocates to a very close location, providing customers do not experience the service reductions outlined in the three Guidance bullets below.

If a customer is formally attached to a particular branch (i.e., they have an individual account number and branch, rather than a central or universal, sort code), and that branch is to close, the customer should be given personal notification of at least 12 weeks.

In all cases (i.e. whether customers are formally attached to a branch or not) a prominent notice should be placed in the branch for all customers to see and consideration given to other local advertising and notifying local councils and community groups.

Notifications should provide information on alternative facilities offered by the firm in the locality including, its nearest alternative branch and its nearest free ATM(s). Notifications should also include generic information about other channels through which banking services are provided.

In exceptional circumstances, such as where there have been life-threatening raids, the notification periods may be reduced or waived by the firm although notification should still be given to customers.

Customer notification of at least 12 weeks should also be given where:

- all counter services in a branch are replaced with automated provision; or
- branch opening hours, are reduced by 30% or more; or
- access to a branch becomes restricted to a particular group or groups of customer(s).

The 30% reduction in opening hours should usually be measured by reference to the branch's previous opening hours over a working week, but alternative measures in line with the local market are acceptable.

This section also applies to branch agencies, where it is the firm who chooses to bring the agency agreement to an end (placing notices in the agency may still be dependent on the goodwill of the agent, and may not therefore be possible – although arrangements and agreements made with agents should have been designed to ensure as far as possible their co-operation in complying with this requirement). If the agent defaults or withdraws from the agreement at short notice, it may not be possible for the firm to give the required notice to customers.

5.6 Cheques

Firms should follow the 2-4-6 and 2-6-6 processes for cheque clearing. These maximum timeframes for each stage of the cheque clearing process apply to customers paying in UK sterling cheques issued by or deposited in to sterling accounts with UK banks and building societies. They do not apply to non-sterling cheques.

Firms should keep original cheques paid from an account, or copies, for at least six years unless they are returned to the customer. This does not apply to cheques that are not cleared through the customer's own account when finally presented, i.e., managers' payments or branch cheques or drafts, building society cheques, etc. which are 'bought' by customers, drawn on the bank or building society itself.

5.7 Disputed cheques

If, within a reasonable period after the entry has been made on a customer's statement, the customer disputes the cheque, firms should provide their customer with the cheque or a copy as evidence. Firms must try to resolve the dispute promptly and if there is an unreasonable delay the amount of the cheque should be added to the customer's account until the dispute is resolved. The dispute referred to is a dispute between the customer and the firm, not a third party.

This practice only applies to cheques issued on customers' own accounts. A common sense approach should be taken in relation to what constitutes a 'reasonable period' and an 'unreasonable delay'

If a firm needs to tell a customer that a cheque has been returned unpaid it should do so in a private and confidential manner.

5.8 Returning paid cheques

Some firms provide a service of returning paid cheques to micro-enterprise customers. If the firm applies a charge for doing so it should provide at least 30 days prenotification, in a durable medium, of any increase to this charge.

5.9 Account security

To provide a fair and efficient service firms must provide secure and reliable banking systems. Important aspects of this process include having effective systems in place to allow customers to report thefts or losses and making available to customers useful information to help them protect their accounts. Such information could include:

- how to notify the firm promptly of any changes to the customer's personal information e.g. name, address and contact details;
- the benefits of checking statements and passbooks regularly and alerting the firm to any irregularities;
- how to keep cards, PINs, chequebooks, statements and security details safe; and
- how to alert the firm promptly to the loss of theft of any account details.

If using online banking:

- how to keep the customer's PC secure;
- how to keep passwords and PINS secret;
- the need to treat e-mails from senders claiming to be from the firm with caution and being wary of e-mails or calls asking for personal security details; and
- advising customers how to access internet banking sites by typing the bank or building society's address into the web browser i.e. not using a link in an e-mail.

Firms are encouraged to refer to the relevant rules at BCOBS 5.1.11 and 5.1.12 for details of a firm's and a customer's liabilities for unauthorised payments.

5.10 Financial Difficulties

FSA's Principle 6 requires that firms pay due regard to the interests of their customers and treat them fairly. Firms should therefore ensure that in providing a prompt, efficient and fair service they consider any apparent cases of customer financial difficulty sympathetically and positively.

If during the course of a customer's account operation a firm becomes aware that the customer may be heading towards financial difficulties, the firm should contact the customer to outline their approach to financial difficulties and to encourage the customer to contact the firm if the customer is worried about their position. Firms should also provide signposts to sources of free, independent money advice. Firms should determine the level of intervention required dependent on the individual customer's position.

Additional information about how to treat customers in debt with financial difficulties can be found within the Lending Code (which has not been confirmed by the FSA). <http://www.lendingstandardsboard.org.uk/>

Relevant BCBS rule

5.1.5 R A firm must provide a prompt and efficient service to enable a *banking customer* to move to a *retail banking service* (including a *payment service*) provided by another firm.

5.11 Sterling currency current account switching

Under the EU Common Principles for Current Account Switching,⁶ arrangements exist between UK firms to facilitate the switching of Sterling currency current accounts. Under these principles firms should as a minimum meet the following standards when a customer indicates that they wish to move their sterling currency current account to a new provider:

- Direct debit and standing order (DDSO) information should be sent by the old bank to the new bank within three working days of receiving a request from the new bank.
- Once the new bank has received the DDSO details from the old bank it should make these available to the customer to enable them to check their accuracy and ensure that only active ones are transferred. If the customer fails to respond within a reasonable period, the new bank may assume that the customer wants all DDSOs to be transferred to their new account.
- All account transfer notifications between banks, customers and direct debit originators should be made by the most expedient method. Depending on the circumstances, this will typically include first class post, telephone, or electronic transmission.
- The old bank should close or move the current account without charge.
- If the customer wishes the new bank to transfer their balance from the old bank to their account with the new bank, and this service is a feature of the new account type, the new bank will give sufficient notice of this to the old bank (this will usually be at least 5 working days before the transfer date). The old bank will act promptly to close the account on the transfer date and, where there is a credit balance, to send the funds in the manner requested. However, if the transfer cannot be completed on that date, the old bank will inform the new bank and the customer of the reason and will complete the transfer as soon as reasonably possible.
- Firms should not levy additional charges for closing an account or for transferring standing orders and direct debits.

The new bank that the customer is switching their current account to should provide the customer with a switching guide which includes information relating to:

- how the process for transferring the account will work and who is responsible for each step in the process;
- what information the old bank will pass to the new bank;
- what features the customer will be offered with the new account; and
- how long the transfer is likely to take.

Where the customer wishes to transfer their DDSOs to the new bank account, the new bank will, if so authorised by the customer, request the DDSO information from the old bank within three working days of approving a valid application. If the application has already been approved, the new bank will request DDSO information from the old bank within three working days of receiving the customer's written request to do so.

Where the customer wishes it to do so, the new bank will notify direct debit originators of the new account details and will do so on a timely basis. The important thing for the customer is that DDSOs are transferred to their new account on the date they have agreed with the new bank.

⁶ The EU Common Principles for Current Account Switching have not been confirmed by the FSA

The new bank should make the new account operational within 10 working days. The 10 working days are counted from the date the customer's application is completed and approved, i.e., once any necessary identification and address validation checks have been completed and, where appropriate, any necessary security has been put in place or any necessary credit has been received.

Operational means that the customer has the ability to pay into and make withdrawals from the account (eg, an ATM card with PIN and, where appropriate, a cheque book).

If any bank charges are incurred by the customer as a result of any mistake or unavoidable delay by a bank during the switch these should be cancelled promptly by the bank where the charge was incurred. If charges are taken from the customer's account before the bank's error has been identified, the customer should be promptly reimbursed.

Where a customer wants to move a retail banking service that is not a Sterling currency current account, and there are switching arrangements in place between the firms involved, the firm should provide a prompt and efficient service which includes closing the account, transferring any account balance and making arrangements in respect of any direct debits or standing orders. Where there are no switching arrangements between the firms involved, the firm should provide a prompt and efficient service when closing the account and returning any deposit

5.12 Additional switching provisions for micro-enterprises

In addition to the switching process outlined above, the following provisions should also be followed by the relevant bank when asked to switch a micro-enterprise current account:

- The customer should be informed of any charges that have already been agreed with them for the closure or switching of their current account, together with any other charges, at the time they ask to close or switch the current account. Such charges should not include additional charges to cancel standing orders or direct debit payments.
- In addition, this is taken to mean not applying any charges which are levied for the administrative process of closing or switching a current account. It does not apply those charges, eg interest, commission, deferred fees, etc which are legitimately due to the firm under the charging terms agreed with the customer.
- This requirement does not apply to early settlement fees for loans or breakage costs for fixed term deposit accounts. Any unavoidable money market costs involved in closing a loan or deposit early can be passed on to the customer. Nor does it apply to deferred or outstanding arrangement, management or non-utilisation fees – these can be taken. Firms should ensure this is transparent to the customer, by informing them of all related charges at the time they ask to close the loan, although the exact amount may need to be calculated and subsequently advised.
- Transferring security involves the giving up of security by one bank and the taking of the same security by another bank. The new bank should therefore advise the customer of their policy on paying the legal and valuation costs of transferring security to them before the switch is initiated.
- In the absence of exceptional circumstances relating to the transfer of charges or securities, banks should complete the transfer of accounts within five working days, when timely information is provided by the customer. This means that the transfer of a micro-enterprise current account should, without exceptional circumstances, be completed within 5 working days after completion of the exchange of information on direct debits and standing orders between the two banks, unless the customer requests differently.

5.13 Cash ISA transfers

To provide a prompt and efficient service to customers wishing to transfer their cash ISA to another provider firms are encouraged to follow the good practice procedures set out in Cash ISA Transfer guidelines produced by the BBA, BSA and TISA. (These guidelines have not been confirmed by the FSA.)

http://www.bba.org.uk/content/1/c6/01/44/60/FINAL_Cash_ISA_Transfers_Guidelines_August_2008.pdf

5.14 Account closure proceeds

Funds should be dispatched in accordance with the customer's instructions on the day an account is closed. Funds should be dispatched promptly and where possible this should be by same working day electronic transfer or BACS.

5.15 Interest on account-opening funds received by cheque

Where funds are received by cheque for the opening or transfer of an interest-bearing account, customers should be paid interest at the rate applicable to the new product from no later than 2 working days after the cheque is received.

Relevant BCBS rules

5.1.9 R A *firm* must make appropriate arrangements to enable a *banking customer*, so far as is possible, to trace and, if appropriate, to have access to a *deposit* held (or formerly held) in a *retail banking service* provided by the *firm*. This applies even if:

(1) the *banking customer* may not be able to provide the *firm* with information which is sufficient to identify the *retail banking service* concerned; or

(2) the *banking customer* may not have carried out any transactions in relation to that *retail banking service* for an extended period of time.

5.1.10 R If a *firm* participates in the scheme under the Dormant Bank and Building Society Accounts Act 2008, it must inform a *banking customer* of this fact and provide appropriate information regarding the terms of the scheme on entering into communications with a *banking customer* regarding a *dormant account*.

5.16 Dormant and Lost accounts

Firms should follow the ten core 'pledges' which underpin the dormant and lost accounts schemes:

- In advance of making an account dormant, following an extended period of inactivity, firms will write to the last known address asking whether the account should be kept open, unless mail has already been returned from that address or the account's balance is below a de minimis level.
- Where the customer responds, the account will be kept open.
- If no response is received, the account will be made dormant and/or additional security procedures applied as a means of preventing fraud and protecting privacy.
- A record of dormant and lost accounts, including unclaimed assets, will be maintained in perpetuity.
- The funds remain in the beneficial ownership of the customer and will continue to attract interest on the same basis as the preceding live account.
- Claim forms will be made available through the branch network, central institutional points and through the BBA, BSA and NS&I and www.mylostaccount.org.uk
- Claims made direct to individual firms or via www.mylostaccount.org.uk will be processed as quickly as possible and, in any event, within three months.
- In the event of a valid claim the customer will be advised of: the balance of the account; the amount of interest that has accrued if the account is interest-bearing; and how the customer can access the funds.
- The commitment on the part of banks and building societies to assist customers to reclaim money in a dormant account or lost account includes accounts falling within the statute-backed unclaimed assets scheme.
- There is a right of appeal through internal bank processes and, ultimately, by recourse to the Financial Ombudsman Service.

5.17 Unclaimed Assets Scheme

The FSA has not reviewed or confirmed Section 5.18 of this Guidance and will not have regard to this section when exercising its regulatory functions.

The Unclaimed Assets Scheme ('the Scheme') is scheduled to be introduced following the completion of Government secondary legislation and an FSA policy statement on its detailed regulatory requirements. The main features of the Scheme are set out in the Dormant Bank and Building Society Accounts Act 2008.

While participation in the Scheme will be voluntary, the BSA and the BBA are encouraging their respective members to participate and the largest banks have confirmed their participation. The operation of the Scheme will be governed mainly by a series of bilateral agency agreements between each bank and building society and the reclaim fund.

Notification of the introduction of the Scheme was made at the time of the 2008 revision to the Banking Code. The promotion of the central tracing service www.mylostaccount.org.uk has further raised general levels of awareness about the existence of the Scheme and has made available contact details so customers know where to go if they want to trace a dormant or lost account. Banks and building societies, in addition, need to publish to their websites their dormancy policies (see below).

Although under the Scheme liability to repay customer balances will rest with a Reclaim Fund, banks and building societies that participate in the Scheme are responsible for dealing with requests from lost account holders who come forward to claim their account (and any money paid under an agency agreement will be reimbursed subsequently by the Reclaim Fund).

When a customer claims an account that falls within the Scheme - and subject to their satisfying any identification and verification checks subscribers may have in place – they will usually have two options. They either:

- reactivate the account; or
- withdraw the available balance and close the account.

Whichever option the customer chooses to take they should be reunited with their money without undue delay.

In the case of straight forward enquiries, for instance in respect of an account made dormant relatively recently for which the claimant has full account details, the bank or building society should be able to reactivate the account or repay the funds within a matter of weeks. For less straightforward enquiries, for instance where the account is old or the claimant has only partial account details, it may take up to three months to advise on whether there may be a claim. The transfer of money to the reclaim fund should have no bearing on the time taken as the bank or building society will remain solely responsible for the maintenance of individual account records in respect of accounts falling within the unclaimed assets scheme.

It should be noted that for building society accounts where the account attracts an entitlement to membership of the society, the account holder should be informed that one of the consequences, should they choose to close the account, is that they will lose entitlement to any future rights they would otherwise have had as a member of the building society.

The Scheme will define an unclaimed asset as an account on which there has been no customer activity for 15 years or more. There are two areas relating to this where banks and building societies will have discretion:

First, firms will be able to take account of other evidence of customer activity within the previous 15 years. The Dormant Bank and Building Society Accounts Act 2008 outlines a number of examples of customer activity, which include but are not limited to:

- transactions on other accounts held with the institution (e.g. a savings, mortgage, current or credit card account);
- evidence of the customer visiting a branch, logging on to a website or phoning a call centre; and
- voting at a building society AGM.

Banks and building societies participating in the scheme need to post to their website their policy on dormancy. If firms take account of other evidence of customer activity as outlined above, it is important that they have systems in place to record all instances of such customer activity as firm's records may be subject to external audit.

Second, as related above, where the customer disagrees with the way a bank or building society has dealt with their claim, the customer has a right of appeal through its internal complaints procedure and then through the Financial Ombudsman Service. In the case of account monies transferred under the unclaimed assets scheme the customer will be notified where the complaint is against the reclaim fund and not the bank or building society. The bank or building society will however provide all parties with information needed to make an informed decision on the complaint and will issue the final response expressly stated to be on behalf of the reclaim fund. This will enable the FOS to establish whether the complaint is against the reclaim fund, the bank or building society or whether specific elements of the original complaint are against each party.

Annex A: Savings account summary box

This annex applies only to the use of a summary box for savings account financial promotions, and for pre-sale material for savings accounts, where Parts 5 and 6 of the PSRs do not apply.

The aim of the summary box is to provide customers with a consistent and succinct summary of the key product features for the product they are considering. This should enable customers to compare different products more easily.

When key product information for savings accounts is presented, in pre-sale material, to customers in a written and/or online format it could be made available in a standard summary box. The content and order of the summary box is outlined below:

Key Product Information for our XXX Savings Account(s)	
Account Name	Name of savings account
Interest rates (AERs)	(This information can be signposted – see explanatory text below) Interest rate payable – inc. fixed or variable Any guarantees – inc. term if applicable Current 'go to' rate (if applicable) and date of 'go to'
Tax status	Basis on which interest is taxed e.g. gross/net/tax free
Conditions for bonus payment	Minimum/maximum term (this information can be signposted - see explanatory text below) Penalties for withdrawal
Withdrawal arrangements	Any notice period or penalties for withdrawal
Access	Web/phone/post/branch

Layout

Whilst overall size, fonts etc are not specified, presentation should be both clear and legible. The summary box can include key product information for more than one of the firm's savings products, but information for each product should be presented in an individual column.

Left hand column

The sequence of information presented in the left hand column should be the same for each product and as outlined above.

Right hand column

The right hand column above provides examples of the type of information that should be presented for each key product feature, but are not prescriptive or exhaustive. Firms should ensure that information relevant to the key product feature (left hand column) is included in the right hand column. Information may be left out of the right hand column for features that the product does not include e.g. 'Not applicable' can be inserted.

Firms can provide interest rates/AER information and information about the terms of the bonus payment by signposting to a separate interest rate document, but this document should be clearly signposted in the summary box and easily available to the customer.

Any other product information which the firm feels should be given to the customer may be presented in close proximity to, but not within, the summary box.

Usage

If used, the summary box should appear prominently on or within pre-sale material. This will typically cover direct mail pieces; free standing leaflets; marketing inserts etc. But not media such as newspapers, posters, television, radio, cinema and outdoor advertising.

Provision of a summary box may not be appropriate where the firm is providing the customer with presale information in an oral form, e.g. via telephone,

A summary box might not be appropriate in specialist customer segments such as micro-enterprises and private banking.

For internet applications a link to a page containing the summary box may be available with other pre-sale savings account information.

Annex B: Banking Conduct of Business Sourcebook

BCOBS 1.1 General application

The general application rule

BCOBS 1.1.1 **R** 01/11/2009

This sourcebook applies to a *firm* with respect to the activity of *accepting deposits* from *banking customers* carried on from an establishment maintained by it in the *United Kingdom* and activities connected with that activity.

Limitations on the general application rule

BCOBS 1.1.2 **R** 01/11/2009

The general application *rule* is modified in the chapters of this sourcebook for particular purposes.

BCOBS 1.1.3 **R** 01/11/2009

Except as provided for in *BCOBS 1.1.4R*, this sourcebook does not apply to:

- (1) *payment services* where Part 5 and 6 of the *Payment Services Regulations* apply; or
- (2) a *person* or *firm* which has permission for *accepting deposits* but only for the purposes of, or in the course of, an activity other than *accepting deposits*.

BCOBS 1.1.4 **R** 01/12/2009

- (1) Chapters 2, 5 and 6 of *BCOBS* (except for *BCOBS 5.1.11 R* to *BCOBS 5.1.19 R*) apply to *payment services* where Parts 5 and 6 of the *Payment Services Regulations* apply.
- (2) Chapter 3 of *BCOBS* applies to *payment services* where Parts 5 and 6 of the *Payment Services Regulations* apply with the modifications set out in *BCOBS 3.1.2 R(2)*.
- (3) A *firm* will not be subject to *BCOBS* to the extent that it would be contrary to the *United Kingdom's* obligations under an *EU* instrument.

BCOBS 1.1.5 **R** 01/11/2009

BCOBS 5.1.13 R does not apply to a *credit union*.

Exclusion of liability

BCOBS 1.1.6 **R** 01/11/2009

A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *banking customer* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.

BCOBS 1.1.7 01/11/2009

The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

BCOBS 2.1 Purpose and Application: Who and what?

BCOBS 2.1.1 01/11/2009

Principle 6 requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. This chapter reinforces these requirements by requiring a *firm* to pay regard to the information needs of *banking customers* when communicating with, or making a *financial promotion* to, them and to communicate information in a way that is clear, fair and not misleading.

BCOBS 2.1.2 01/11/2009

In addition to the general application rule (BCOBS 1.1.1 R), this chapter applies to the *communication*, or *approval for communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *retail banking service* unless it can lawfully be *communicated* by an *unauthorised person* without *approval*.

BCOBS 2.1.3 01/11/2009

This chapter applies to a *firm*:

- (1) communicating with a *banking customer* in relation to *accepting deposits*;
- (2) *communicating a financial promotion* that is not an *excluded communication*; or
- (3) *approving a financial promotion*.

BCOBS 2.2 The fair, clear and not misleading rule

BCOBS 2.2.1 01/11/2009

A *firm* must take reasonable steps to ensure that a *communication* or a *financial promotion* is fair, clear and not misleading.

BCOBS 2.2.2 01/11/2009

The fair, clear and not misleading *rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a *communication* addressed to a *banking customer* who is not a *consumer* may not need to include the same information, or be presented in the same way, as a *communication* addressed to a *consumer*.

BCOBS 2.2.3 01/11/2009

The *rules* in SYSC 3 (Systems and Controls) and SYSC 4 (General organisational requirements) require a *firm* to put in place systems and controls or policies and procedures in order to comply with the *rules* in COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1 R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions) and this chapter of BCOBS.

BCOBS 2.2.4 01/11/2009

Section 397 (Misleading statements and practices) of the *Act* creates a criminal offence relating to certain misleading statements and practices.

BCOBS 2.3 Other general requirements for communications and financial promotions

BCOBS 2.3.1 01/11/2009

A *firm* must ensure that each communication made to a *banking customer* and each *financial promotion communicated* or *approved* by the *firm*:

- (1) includes the name of the *firm*;
- (2) is accurate and, in particular, does not emphasise any potential benefits of a *retail banking service* without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (4) does not disguise, diminish or obscure important information, statements or warnings.

BCOBS 2.3.2 01/11/2009

The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *banking customer* can identify the *firm* communicating the information.

BCOBS 2.3.3 01/11/2009

In deciding whether, and how, to *communicate* information to a particular target audience, a *firm* should take into account the nature of the *retail banking service*, the *banking customer's* likely or actual commitment, the likely information needs of a reasonable recipient, and the role of the communication or *financial promotion* in the sales process.

BCOBS 2.3.4 01/11/2009

If a communication or a *financial promotion* names the *FSA* as the regulator of a *firm* and refers to matters not regulated by the *FSA*, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FSA*.

BCOBS 2.3.5 01/11/2009

When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *banking customer* being insufficient, unclear, unfair or misleading.

BCOBS 2.3.6 01/11/2009

The Credit Institutions (Protection of Deposits) Regulations 1995 may apply in relation to communications with a *banking customer*.

BCOBS 2.3.7 **R** 01/11/2009

If a communication or a *financial promotion* compares a *retail banking service* with one or more other *retail banking service* (whether or not provided by the *firm*), the *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way.

BCOBS 2.3.8 **R** 01/11/2009

If a communication or a *financial promotion* in relation to a *retail banking service* refers to a particular tax treatment or rate of interest payable, a *firm* must ensure that a prominent statement that the tax treatment or the rate of interest payable:

- (1) depends on the individual circumstances of each *banking customer*; and
- (2) may be subject to change in the future;

is either included in that communication or *financial promotion*, or provided to the *banking customer* on paper or in another *durable medium* in good time before the *banking customer* is bound by the contract for that *retail banking service*.

BCOBS 2.3.9 **G** 01/11/2009

When designing a *financial promotion*, a *firm* may find it helpful to take account of the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts.

BCOBS 2.4 Structured deposits, cash deposit ISAs and cash deposit CTFs

BCOBS 2.4.1 **G** 01/11/2009

If a *financial promotion* relates to a *structured deposit*, rules in COBS 4.6 (Past, simulated past and future performance) will also apply.

BCOBS 2.4.2 **G** 01/11/2009

If a *financial promotion* relates to a *cash deposit ISA* or *cash deposit CTF*, COBS 4.7.1 R (Direct offer financial promotions) also applies.

BCOBS 3.1 Distance marketing

Application

BCOBS 3.1.1 **R** 01/11/2009

This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

The distance marketing disclosure rules

BCOBS 3.1.2 **R** 01/11/2009

(1) Subject to (2), a *firm* must provide a *consumer* with the distance marketing information (BCOBS 3 Annex 1 R) in good time before the *consumer* is bound by a *distance contract* or offer.

(2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the consumer only the information specified in rows 7 to 12, 15, 16 and 20 of *BCOBS 3 Annex 1 R*.

[**Note:** articles 3(1) and 4(5) of the *Distance Marketing Directive*]

BCOBS 3.1.3 01/11/2009

A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[**Note:** article 3(2) of the *Distance Marketing Directive*]

BCOBS 3.1.4 01/11/2009

When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

[**Note:** article 3(3)(a) of the *Distance Marketing Directive*]

BCOBS 3.1.5 01/11/2009

A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[**Note:** article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

BCOBS 3.1.6 01/11/2009

A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* (*BCOBS 3.1.2R* to *3.1.5R*) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** articles 4(5) and 5 (1) of the *Distance Marketing Directive*]

BCOBS 3.1.7 01/11/2009

A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

BCOBS 3.1.8 01/11/2009

The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[**Note:** article 7 (1) of the *Distance Marketing Directive*]

Exception: successive operations

BCOBS 3.1.9 **R** 01/11/2009

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this chapter only apply to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

BCOBS 3.1.10 **R** 01/11/2009

(1) If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (BCOBS 3.1.2R to 3.1.5R) will only apply:

- (a) when the first operation is performed; and
- (b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[**Note:** recital 16 and article 1(2) of the *Distance Marketing Directive*]

(2) In this section:

- (a) "initial service agreement" includes the opening of a bank account;
- (b) "operations" includes the deposit or withdrawal of funds to or from a bank account; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing *retail banking service*, does not constitute an "operation" but an additional contract to which the rules in this chapter apply.

[**Note:** recital 17 of the *Distance Marketing Directive*]

Exception: voice telephony communications

BCOBS 3.1.11 **R** 01/11/2009

In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (BCOBS 3 Annex 2 R) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (BCOBS 3 Annex 1 R) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

[**Note:** articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: means of distance communication not enabling disclosure

BCOBS 3.1.12 **R** 01/11/2009

A *firm* may provide the distance marketing information (BCOBS 3 Annex 1 R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a

consumer's request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(2) of the *Distance Marketing Directive*]

Exception: contracts for payment services

BCOBS 3.1.13  01/11/2009

Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in BCOBS 3.1.2R (2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

Consumer's right to request paper copies and change the means of communication

BCOBS 3.1.14  01/11/2009

At any time during the contractual relationship, the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

BCOBS 3.1.15  01/11/2009

(1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of a reply not constituting consent.

(2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]

Mandatory nature of a consumer's rights

BCOBS 3.1.16  01/11/2009

If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[Note: article 12 of the *Distance Marketing Directive*]

Contracts governed by law of a third party state

BCOBS 3.1.17  01/11/2009

If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the territory of one or more *EEA States*.

[Note: articles 12 and 16 of the *Distance Marketing Directive*]

BCOBS 3.2 E Commerce

Application

BCOBS 3.2.1 **R** 01/11/2009

This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.

Information about the firm and its products or services

BCOBS 3.2.2 **R** 01/11/2009

A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm* including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1 R*), together with a statement which explains that it is on the *FSA Register* and includes the *FSA* registration number;
- (5) if it is a *professional firm*, or a person regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
 - (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

BCOBS 3.2.3 **R** 01/11/2009

If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

BCOBS 3.2.4 **R** 01/11/2009

A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;

- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

BCOBS 3.2.5 **R** 01/11/2009

An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

BCOBS 3.2.6 **R** 01/11/2009

A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filled in by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means) acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
- (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and 11(1) and (2) of the *E-Commerce Directive*]

BCOBS 3.2.7 **R** 01/11/2009

For the purposes of *BCOBS 3.2.6R (3)*, an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

BCOBS 3.2.8 **R**01/11/2009

Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e mail

BCOBS 3.2.9 **R**01/11/2009

The requirements relating to the placing and receipt of orders (*BCOBS 3.2.6R (3)*) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** articles 10(4) and 11(3) of the *E-Commerce Directive*]

BCOBS 3 Annex 1 Distance marketing information

R01/11/2009

This Annex belongs to *BCOBS 3.1.2 R* (The distance marketing disclosure rules)

Information about the firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's</i> <i>EEA State</i> of residence, the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
(3)	Where the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant to the <i>consumer's</i> relations with that professional.
(4)	The particulars of the public register in which the <i>firm</i> is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (<i>GEN 4</i>), a statement that the <i>firm</i> is on the <i>FSA Register</i> and its <i>FSA</i> registration number.
Information about the financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be

	indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(7)	Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.
(8)	Notice of the possibility that other taxes or costs may exist that are not paid via the <i>firm</i> or imposed by it.
(9)	Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a <i>firm's</i> offer applies as it stands.
(10)	The arrangements for payment and performance.
(11)	Details of any specific additional cost to the <i>consumer</i> for using a means of distance communication.
Information about the contract	
(12)	The existence or absence of a right to cancel under the cancellation rules (<i>BCOBS 6</i>) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , as well as the consequences of not exercising the right to cancel.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
(16)	The <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
(17)	Any contractual clause on the law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.

Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its liabilities.
[Note: Recitals 21 and 23 to, and article 3(1) of, the <i>Distance Marketing Directive</i>]	

BCOBS 3 Annex 2 Abbreviated distance marketing information

R01/11/2009

This Annex belongs to *BCOBS 3.1.11 R*

(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service including all taxes paid via the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes and/or costs may exist that are not paid via the <i>firm</i> or imposed by him.
(5)	The existence or absence of a right to cancel in accordance with the cancellation rules (<i>BCOBS 6</i>) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay on the basis of the cancellation rules.
(6)	That other information is available on request and what the nature of that information is.
[Note: article 3(3)(b) of the <i>Distance Marketing Directive</i>]	

BCOBS 4.1 Enabling banking customers to make informed decisions

The appropriate information rule

BCOBS 4.1.1 **R** 01/11/2009

A *firm* must provide or make available to a *banking customer* appropriate information about a *retail banking service* and any *deposit* made in relation to that *retail banking service*:

- (1) in good time;
- (2) in an appropriate medium; and
- (3) in easily understandable language and in a clear and comprehensible form;

so that the *banking customer* can make decisions on an informed basis.

BCOBS 4.1.2 **G** 01/11/2009

- (1) In determining:
 - (a) what is "in good time";
 - (b) the appropriate medium for communicating information; and
 - (c) whether it is appropriate to provide information (that is, send or give it directly to the *banking customer*) or make it available (that is, make it available to obtain at the *banking customer's* option);

a *firm* should consider the importance of the information to the decision-making process of the *banking customer* and the time at which the information may be most useful. Distance communications requirements are also relevant.

- (2) For example, (unless *BCOBS 3* applies) a *firm* should provide the terms and conditions of the contract for a *retail banking service* on paper or in another *durable medium* in good time before a *banking customer* is bound by them.
- (3) Where a *firm* proposes to exercise a power to make:
 - (a) a change to any term or condition of the agreement;
 - (b) a change to any charge; or
 - (c) a material change to any rate of interest;

that applies to the *retail banking service* and that will be to the disadvantage of a *banking customer*, the *firm* should provide reasonable notice to the *banking customer* on paper or in another durable medium before the change takes effect, taking into account the period of notice required by the *banking customer* to terminate the contract for the *retail banking service*. Whether a change to a rate of interest is "material" should be determined having regard to the size of the balance of the account and the size of the change in the rate.

- (4) Where a *firm* notifies a *banking customer* of a material change to a rate of interest that applies to a *retail banking service* and that will be to the disadvantage of a *banking customer*, this notification should, where applicable:
 - (a) refer to the fact that the *firm* offers a comparable *retail banking service* for which the *banking customer* is eligible;

(b) indicate that the *banking customer* may move to that *retail banking service* or a *retail banking service* provided by another *firm*; and

(c) indicate that the *firm* will assist the *banking customer* to move to another *retail banking service* if he wishes to do so.

(5) Where, under a contract for a *retail banking service*, an introductory, promotional or preferential rate of interest applies to the *retail banking service* until a specified future date or the end of a fixed period, a *firm* should, where appropriate, provide notice of the expiry of the application of that rate of interest to the *banking customer* on paper or in another durable medium within a reasonable period before that rate of interest ceases to apply.

(6) In determining whether it is appropriate to provide the notice referred to in (5), a *firm* should consider:

(a) whether there is a material difference between the introductory or promotional rate of interest and the rate of interest that will apply to the *retail banking service* following the expiry of the introductory or promotional rate of interest;

(b) the size of the balance of the account; and

(c) the period of time that has elapsed since the *firm* last provided information to the *banking customer* in relation to the period for which the introductory or promotional rate of interest is applicable and the effect of its expiry.

(7) The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to use or rely on a variation clause in a contract with a *consumer*.

BCOBS 4.1.3 **R** 01/11/2009

Where a *rule* in this chapter requires information to be provided on paper or in another *durable medium* before a *banking customer* is bound by the terms and conditions of the contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see *BCOBS 3.1.11 R* and *BCOBS 3.1.12 R*).

BCOBS 4.1.4 **G** 01/11/2009

The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

(1) the *firm*;

(2) the different *retail banking services* offered by the *firm* which share the main features of the *retail banking service* the *banking customer* has enquired about, or which have the product features the *banking customer* has expressed an interest in, unless the *banking customer* has expressly indicated that he does not wish to receive that information;

(3) the terms and conditions of the contract for a *retail banking service* and any changes to them;

(4) the rate or rates of interest payable on any deposit, how and when such interest is calculated and applied and any changes to that rate or those rates;

(5) any charges at any time payable by or on behalf of a *banking customer* in relation to each *retail banking service* and any changes to those charges;

(5A) the time at which any funds placed with or transferred to the *firm* for credit to the *banking customer's* account will be made available to the *banking customer*;

- (6) a *banking customer's* rights to cancel a contract for a *retail banking service*;
- (7) how a *banking customer* may make a complaint (at the time and in the manner required by *DISP 1.2*);
- (8) the terms of any compensation scheme if the firm cannot meet its obligations in respect of the *retail banking service*;
- (9) basic bank accounts but only if the *firm* offers a basic bank account and the *banking customer* meets the *firm's* eligibility criteria for such an account; and
- (10) the timescales for each stage of the cheque clearing process.

BCOBS 4.1.5 01/11/2009

The information required by the appropriate information *rule* may vary according to matters such as:

- (1) the *banking customer's* likely or actual commitment;
- (2) the information needs of a reasonable recipient having regard to the type of *retail banking service* that is proposed or provided and its overall complexity, main benefits, risks, limitations, conditions and duration;
- (3) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see *BCOBS 3.1*)); and
- (4) whether the same information has been provided to the *banking customer* previously and, if so, when that was.

BCOBS 4.1.6 01/11/2009

The existence of cancellation rights does not affect what information it is appropriate to give a *banking customer* in order to enable him to make an informed purchasing decision.

BCOBS 4.1.7 01/11/2009

If the *retail banking service* is a *cash deposit ISA* or a *cash deposit CTF*, the rules in *COBS 13.1* (Preparing product information) and *COBS 14.2* (Providing product information to clients) also apply.

BCOBS 4.2 Statements of account

BCOBS 4.2.1 01/11/2009

- (1) A *firm* must provide or make available to a *banking customer* on paper or in another *durable medium* such regular statements of account as are appropriate to the type of *retail banking service* provided, but need not do so where:
 - (a) the *firm* has provided a *banking customer* with a pass book or other document in a *durable medium* that records transactions in relation to the *retail banking service*;
 - (b) the *retail banking service* is provided at a distance by means of electronic equipment where the *banking customer* can access his account balance, view transactions and give instructions in relation to the *retail banking service* at a distance by such means;
 - (c) a *banking customer* has elected not to receive periodic statements of account, and for so long as such election is in force; or

(d) it has reasonable grounds to believe that the *banking customer* is not resident at the address last known to it as the address of the *banking customer* and it is not practicable after reasonable inquiry to ascertain the *banking customer's* address.

(2) A *firm* must not charge for providing information which is required to be provided by (1).

(3) A *firm* must provide a *banking customer* with a true copy of any statement of account provided to him under (1) on paper or in another *durable medium* within a reasonable period of time following a request to that effect made by or on his behalf.

(4) A *firm* and a *banking customer* may agree on a charge for:

(a) providing a copy of a statement of account under (3); or

(b) providing statements of account more frequently than required by (1);

at the request of the *banking customer*. Any such charge must reasonably correspond to the *firm's* actual costs.

BCOBS 4.2.2 01/11/2009

A *firm* should consider indicating the rate or rates of interest that apply to a *retail banking service* in each statement of account provided or made available to a *banking customer* in respect of that *retail banking service* in accordance with *BCOBS 4.2.1R*.

BCOBS 5.1 Post sale requirements

Service

BCOBS 5.1.1 01/11/2009

A *firm* must provide a service in relation to a *retail banking service* which is prompt, efficient and fair to a *banking customer* and which has regard to any communications or *financial promotion* made by the *firm* to the *banking customer* from time to time.

BCOBS 5.1.2 01/11/2009

In determining the order in which to process payment instructions in relation to the *retail banking service*, a *firm* must have regard to its obligation to treat *banking customers* fairly.

BCOBS 5.1.3 01/11/2009

To the extent that it relates to a *retail banking service*, a *firm* may find it helpful to take account of the British Bankers' Association "A Statement of Principles: Banks and businesses - working together".

Dealings with customers in financial difficulty

BCOBS 5.1.4 01/11/2009

Principle 6 requires a *firm* to pay due regard to the interests of its customers and to treat them fairly. In particular, a *firm* should deal fairly with a *banking customer* whom it has reason to believe is in financial difficulty.

Moving a retail banking service

BCOBS 5.1.5 **R** 01/11/2009

A *firm* must provide a prompt and efficient service to enable a *banking customer* to move to a *retail banking service* (including a *payment service*) provided by another *firm*.

BCOBS 5.1.6 **G** 01/11/2009

Where a *banking customer* wishes to move a *retail banking service* and there are no arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will extend only to providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account and returning any *deposit* (with interest as appropriate) to the *banking customer*.

BCOBS 5.1.7 **G** 01/11/2009

Where a *banking customer* wishes to move a *retail banking service* and there are arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will include providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account, transferring any account balance and making arrangements in respect of any direct debits or standing orders.

BCOBS 5.1.8 **G** 01/11/2009

A *firm* may find it helpful to take account of the European Banking Industry Committee Common Principles for Bank Account Switching and the British Bankers' Association/ Building Societies Association/ Tax Incentivised Savings Association Cash ISA Transfers: Guidelines.

Lost and dormant accounts

BCOBS 5.1.9 **R** 01/11/2009

A *firm* must make appropriate arrangements to enable a *banking customer*, so far as is possible, to trace and, if appropriate, to have access to a *deposit* held (or formerly held) in a *retail banking service* provided by the *firm*. This applies even if:

- (1) the *banking customer* may not be able to provide the *firm* with information which is sufficient to identify the *retail banking service* concerned; or
- (2) the *banking customer* may not have carried out any transactions in relation to that *retail banking service* for an extended period of time.

BCOBS 5.1.10 **R** 01/11/2009

If a *firm* participates in the scheme under the Dormant Bank and Building Society Accounts Act 2008, it must inform a *banking customer* of this fact and provide appropriate information regarding the terms of the scheme on entering into communications with a *banking customer* regarding a *dormant account*.

Firm's liability for unauthorised payments

BCOBS 5.1.11 **R** 01/11/2009

(1) Where a *banking customer* denies having authorised a payment, it is for the *firm* to prove that the payment was authorised.

(2) Where a payment from a *banking customer's* account was not authorised by the *banking customer*, a *firm* must, within a reasonable period, refund the amount of the unauthorised payment to the *banking customer* and, where applicable, restore the *banking customer's* account to the state it would have been in had the unauthorised payment not taken place.

Banking customer's liability for unauthorised payments

BCOBS 5.1.12 **R** 01/11/2009

(1) Subject to (2) and (3), a *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for an amount up to a maximum of £50 for losses in respect of unauthorised payments arising:

(a) from the use of a lost or stolen *payment instrument*; or

(b) where the *banking customer* has failed to keep the personalised security features of the *payment instrument* safe, from the misappropriation of the *payment instrument*.

(2) A *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for all losses in respect of unauthorised payments:

(a) where a *banking customer* has acted fraudulently; or

(b) (subject to (3)) where a *banking customer* has intentionally, or with gross negligence, failed to comply with his or her obligations under the agreement for the *retail banking service* in relation to the issue or use of the *payment instrument* or to take all reasonable steps to keep its personalised security features safe.

(3) Except where a *banking customer* has acted fraudulently, a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any losses in respect of unauthorised payments where:

(a) the unauthorised payment arises after the *banking customer* has notified the *firm* of the loss, theft, misappropriation or unauthorised use of the *payment instrument*;

(b) the *firm* has failed to ensure that appropriate means are available at all times to enable the *banking customer* to notify it of the loss, theft, misappropriation or unauthorised use of a *payment instrument*; or

(c) the *payment instrument* has been used in connection with

(i) a *distance contract*; or

(ii) a *distance selling contract* other than an *excepted contract*.

(4) Except as provided in (1) to (3), a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any consequential loss in respect of an unauthorised payment.

Value date

BCOBS 5.1.13 **R** 01/11/2009

(1) The reference date used by a *firm* for the purpose of calculating interest on funds credited to an account of a *banking customer* held with it must be no later than:

- (a) the *business day* on which the funds are credited to the account of the *firm*; or
- (b) in the case of cash placed with a *firm* for credit to a *banking customer's* account in the same currency as that account, immediately after the *firm* receives the funds.

(2) Paragraph (1) does not apply to funds credited to a *banking customer's* account by means of a paper cheque.

Non-execution or defective execution of payments

BCOBS 5.1.14 **R** 01/11/2009

(1) Where a *banking customer* claims that a payment has not been correctly executed, it is for the *firm* to prove that the payment was authenticated, accurately recorded, entered in the *firm's* accounts and not affected by a technical breakdown or some other deficiency.

(2) In paragraph (1) "authenticated" means the use of any procedure by which a *firm* is able to verify the use of a specific *payment instrument*, including its personalised security features.

BCOBS 5.1.15 **R** 01/11/2009

(1) Where a payment from an account of a *banking customer* is executed in accordance with the *payment routing information* provided in respect of that payment, it shall be treated as correctly executed by each *firm* involved in executing the payment.

(2) Where incorrect *payment routing information* has been provided to a *firm* in respect of a payment:

(a) *BCOBS 5.1.16R* and *BCOBS 5.1.17R* do not apply in relation to that payment; and

(b) the *firm* must make reasonable efforts to recover the funds involved in the transaction.

(3) A *firm* and a *banking customer* may agree on a charge for taking the steps referred to in (2)(b). Any such charge must reasonably correspond to the *firm's* actual costs.

BCOBS 5.1.16 **R** 01/11/2009

(1) Where a *banking customer* instructs or requests a *firm* to make a payment from his or her account and the payment is not correctly executed, the *firm* must, without undue delay:

(a) refund to the *banking customer* the amount of the non-executed or defective payment; and

(b) where applicable, restore the *banking customer's* account to the state in which it would have been had the defective payment not taken place;

unless:

(c) the *firm* can prove that the amount of the payment was received by another *firm* (referred to in this *rule* as "firm B") with which the relevant account of the intended recipient is held.

(2) Where (1)(c) applies, firm B must:

- (a) immediately make available the amount of the payment to the intended recipient; and
- (b) where applicable, credit the corresponding amount to the intended recipient's account.

BCOBS 5.1.17 R 01/11/2009

Where:

- (1) an instruction or request for a payment to be made from a *banking customer's* account is given by the intended recipient of that payment to a *firm*;
- (2) that *firm* can prove that it correctly transmitted the instruction or request to the *firm* with which the relevant account of the *banking customer* is held (in this rule referred to as "firm A"); and
- (3) the payment is not correctly executed;

firm A must, as appropriate and without undue delay:

- (4) refund to that *banking customer* the amount of the payment; and
- (5) restore that *banking customer's* account to the state in which it would have been had the defective payment not taken place.

BCOBS 5.1.18 R 01/11/2009

Where a *firm* is required to give a refund or take other remedial action under *BCOBS 5.1.16R* or *BCOBS 5.1.17R*, it must also refund:

- (1) any charges for which a *banking customer* is responsible; and
- (2) any interest which a *banking customer* must pay;

as a consequence of the non-execution or defective execution of the payment.

BCOBS 5.1.19 R 01/11/2009

Where the non-execution or defective execution of a payment by a *firm* is due to abnormal and unforeseeable circumstances beyond the *firm's* control, the consequences of which would have been unavoidable despite all efforts to the contrary, *BCOBS 5.1.16R* to *BCOBS 5.1.18R* shall not apply with respect to that incorrectly executed payment.

BCOBS 6.1 The right to cancel

Introduction

BCOBS 6.1.1 R 01/11/2009

Except as provided for in *BCOBS 6.1.2 R*, a *banking customer* has a right to cancel a contract for a *retail banking service* (including a *cash deposit ISA*) without penalty and without giving any reason, within 14 calendar days.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

BCOBS 6.1.2 **R** 01/11/2009

There is no right to cancel:

- (1) a contract (other than a *cash deposit ISA*) where the rate or rates of interest payable on the *deposit* are fixed for a period of time following conclusion of the contract;
- (2) a contract whose price depends on fluctuations in the financial market outside the *firm's* control that may occur during the cancellation period; or
- (3) a *cash deposit CTF* (other than a *distance contract*).

BCOBS 6.1.3 **G** 01/11/2009

A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *banking customer* as those in this chapter, unless the differences are clearly explained.

Beginning of cancellation period

BCOBS 6.1.4 **R** 01/11/2009

The cancellation period begins:

- (1) either from the day of the conclusion of the contract for the *retail banking service*; or
- (2) from the day on which the *banking customer* receives the contractual terms and conditions of the *retail banking service* and any other pre-contractual information required under this sourcebook, if that is later than the date referred to in (1) above.

[**Note:** article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

Disclosing the right to cancel

BCOBS 6.1.5 **R** 01/11/2009

(1) The *firm* must disclose to a *banking customer* in good time or, if that is not possible, immediately after the *banking customer* is bound by a contract for a *retail banking service*, and in a *durable medium*, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the *banking customer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.

(2) This *rule* applies only where a *banking customer* would not otherwise receive the information referred to in (1) under a *rule* in this sourcebook from the *firm* (such as under BCOBS 3.1.2 R to 3.1.5 R (the distance marketing disclosure rules)).

BCOBS 6.2 Exercising the right to cancel

BCOBS 6.2.1 **R** 01/11/2009

If a *banking customer* exercises his right to cancel he must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a *durable medium* available and accessible to the recipient, is dispatched before the cancellation period expires.

[Note: article 6(6) of the *Distance Marketing Directive* for distance contracts]

BCOBS 6.2.2 01/11/2009

The *firm* should accept any indication that the *banking customer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *banking customer* as the date when the notification was dispatched.

Record keeping

BCOBS 6.2.3 01/11/2009

The *firm* must make adequate records concerning the exercise of a right to cancel and retain them for at least three years.

BCOBS 6.3 Effects of cancellation

BCOBS 6.3.1 01/11/2009

By exercising a right to cancel, a *banking customer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

BCOBS 6.3.2 01/11/2009

(1) This *rule* applies in relation to a contract for a *retail banking service* that is not a *cash deposit ISA* or a *cash deposit CTF*.

(2) When a *banking customer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The amount payable must not:

- (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
- (b) in any case be such that it could be construed as a penalty.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

(3) The *firm* may not require a *banking customer* to pay any amount on the basis of this *rule* unless it can prove that the *banking customer* was duly informed about the amount payable and, in the case of a contract which is a *distance contract*, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *banking customer's* prior request.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

BCOBS 6.4 Obligations on cancellation

Firm's obligation

BCOBS 6.4.1 **R** 01/11/2009

The *firm* must, without undue delay and within 30 calendar days, return to the *banking customer* any sums it has received from him except for any amount that the *banking customer* may be required to pay under BCOBS 6.3.2 R. This period begins from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

Banking customer's obligation

BCOBS 6.4.2 **R** 01/11/2009

The *firm* is entitled to receive from the *banking customer* any sums or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *banking customer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive* in relation to *distance contracts*]

BCOBS 6.4.3 **R** 01/11/2009

Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

BCOBS 6.5 Other applicable legislation

BCOBS 6.5.1 **R** 01/11/2009

This chapter applies as modified to the extent necessary for it to be compatible with any enactment, including legislation relating to child trust funds.

BCOBS TP 1 Transitional Provision

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
1	BCOBS	R	Until midnight on 1 May 2010 a <i>firm</i> may continue to refer to the British Bankers' Association/ Building Societies Association/APACS Banking Code and/or Business Banking Code in any of its	1 November 2009 to 1 May 2010	1 November 2009

			documentation or literature.		
2	BCOBS 4.1.1R	R	Until midnight on 1 May 2010, a <i>firm</i> need not have regard to BCOBS 4.1.2G (3)(c) or (4) in interpreting and applying BCOBS 4.1.1R.	1 November 2009 to 1 May 2010	1 November 2009
3	BCOBS 4.1.1R	G	Until midnight on 1 May 2010, a <i>firm</i> may continue to communicate changes to any rate of interest that applies to a <i>retail banking service</i> to a <i>banking customer</i> in accordance with its obligations under the general law and (where a <i>firm</i> subscribed to the British Bankers' Association/ Building Societies Association/APACS Banking Code or Business Banking Code on 1 July 2009) the standards set out in those Codes.	1 November 2009 to 1 May 2010	1 November 2009
4	BCOBS 4.1.1R	R	With respect to an introductory, promotional or preferential rate of interest that expires before midnight on 1 May 2010, a <i>firm</i> need not have regard to BCOBS 4.1.2G (5) or (6) in interpreting and applying BCOBS 4.1.1R.	1 November 2009 to 1 May 2010	1 November 2009
5	BCOBS 5.1.13R	R	With respect to funds credited to an account of a <i>banking customer</i> before midnight on 1 February 2010, a <i>firm</i> need not comply with BCOBS 5.1.13R.	1 November 2009 to 1 February 2010	1 November 2009

BCOBS Sch 1 Record-keeping requirements

01/11/2009

Notes:	
1	The aim of the <i>guidance</i> in the following table is to give the reader a quick overall view of the relevant record-keeping requirements.
2	It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	When record must be made	Contents of record	Retention period
<i>BCOBS 6.2.3 R</i>	Cancellation: exercise of right	Exercise of the right to cancel	Date of exercise	At least three years

BCOBS Sch 2 Notification requirements

01/11/2009


There are no requirements for notification in *BCOBS*.

BCOBS Sch 3 Fees and other required payments

01/11/2009

There are no requirements for fees or other payments in *BCOBS*.

BCOBS Sch 4 Powers exercised

BCOBS Sch 4.1  01/11/2009

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *BCOBS*:

	Section 138 (General rule-making power)
	Section 139(4) (Miscellaneous ancillary matters)
	Section 145 (Financial promotion rules)
	Section 156 (General supplementary powers)

BCOBS Sch 4.2  01/11/2009

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *BCOBS*:

	Section 157(1) (Guidance)
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BCOBS Sch 5 Rights of action for damages

01/11/2009

5.1	The table below sets out the <i>rules</i> in <i>BCOBS</i> contravention of which by an <i>authorised person</i> may be actionable under section 150 of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.
5.2	If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a <i>private person</i> under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the <i>FSA</i> has removed the right of action under section 150(2) of the <i>Act</i> . If so, a reference to the <i>rule</i> in which it is removed is also given.
5.3	The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the <i>rule</i> may be actionable is given.

Rule	Right of action under section 150			
	For private person?	Removed?	For other person?	
Any rule in <i>BCOBS</i> which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability	Yes	No	Yes	Any other person
All other rules in <i>BCOBS</i>	Yes	No	No	

BCOBS Sch 6 Rules that can be waived

01/11/2009

6.1	As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the <i>FSA</i> has power to waive all its <i>rules</i> . However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FSA</i> to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.
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