

# Bulletin

## Banking Code Standards Board

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TO BANKING CODE AND BUSINESS BANKING CODE  
COMPLIANCE OFFICERS

No.15

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With plenty of ground to cover since our last Bulletin in February, this threatens to be something of a bumper edition, but is hopefully not too indigestible in the midst of the holiday season. Things that have kept us busy at the BCSB include the Code Review, the parallel initiative to implement the Distance Marketing Directive, themed monitoring as well as regular full visits, completion of the Annual Statement of Compliance review, and the recent launch of our 2003/04 Annual Report.

As usual, please circulate this Bulletin within your organisation for information or action as appropriate. Items which may require you to take specific action are listed in bold type in the Contents.

## 1. CODE DEVELOPMENTS

### (i) 2004 Independent Review of the Codes

Elaine Kempson has now held two sessions of round table meetings, on 2 April and 22 June. A range of stakeholders in the Codes has participated, including members of the compliance community as well as government and consumer and small business interests. Elaine is about to deliver her report and will then discuss the practical and cost implications of her proposals with the sponsors. Without wanting to pre-empt her conclusions, we gathered from the June round table that her recommendations will include the following subjects alongside a number of others:

- Key Commitments: role and content.
- Interest rate change notifications to become delivery channel neutral.
- Credit cards: Codes or the Guidance to embody guidelines produced under APACS' auspices on summary boxes, unsolicited credit card cheques and health warnings on making only minimum repayments.
- Clearing and payment cycles: improved transparency.

### (ii) Distance Marketing Directive

We wrote about the DMD in Bulletins 12 and 13 last year. With the October 2004 deadline looming, we are aware that subscribers are keen to know what the practical implications are for them.

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The FSA published its Rules for the implementation of the DMD in April, in Policy Statement 04/11, which is at:

[http://www.fsa.gov.uk/pubs/policy/ps04\\_11.pdf](http://www.fsa.gov.uk/pubs/policy/ps04_11.pdf)

The BSA issued a Circular (No. 6055) to its members on 28 April giving a fairly full summary of the background and an update, and the BBA wrote to Code subscribers on 13 May, quoting from the FSA and indicating a need for compliance officers to familiarise themselves with the FSA Rules.

The following is a brief recap and summary of the present situation:

- The DMD applies to natural persons acting outside their trade, business or profession. This means that it does not affect the Business Banking Code.
- The DMD aims to ensure minimum levels of pre-contract information and the provision of a two-week cancellation period. Neither concept is new to the Banking Code, but precise terms and definitions need to be aligned with DMD requirements.
- HM Treasury has overall responsibility for UK implementation. Application to deposit-taking will be governed by FSA Rules which come into effect in October. Implementation for consumer credit business is the responsibility of the DTI and OFT. The timetable for consumer credit legislation is such that new DMD-related requirements are unlikely to affect the Banking Code before 2005.
- The BBA and BSA, in consultation with the FSA, are currently drafting additions and amendments to the Banking Code Guidance that will broadly result in the transposition of the relevant FSA Rules verbatim. The aim is that this work will be finalised in August.
- We are currently drafting with the FSA a note setting out the arrangements under which we will carry out monitoring and enforcement of compliance with the transposed DMD Rules. There will be a need to keep the FSA informed of our activities and to consult with them, and they with us, over any significant concerns that arise.
- There is a mismatch between the territorial jurisdiction of the Code, currently limited in detailed application to customers in the UK, and the DMD which covers dealings with customers in any European Economic Area state. Discussion is in progress over whether this should be resolved by the FSA Rules rather than the Code governing business by subscribers with customers outside the UK for DMD purposes, or by amending the Code's territorial scope. The practical effects are thought to be limited for many Code subscribers.
- An issue with more immediate possible implications for many subscribers is the interpretation of what is a distance contract. This particularly affects literature which has been designed for branch use, implying that it is not affected by the DMD, but which may nevertheless be taken away and used to apply for a product without any discussion with branch staff. We understand that the Treasury does not now intend to issue interpretation or guidance on this point beyond the definitions in the Directive, which are

largely reflected in the definitions annexed to the FSA Rules. While subscribers should examine the definitions themselves, and some may decide voluntarily to standardise literature for branch and distance sales in a DMD-compliant manner, we are not aware of any firm steerage to change branch literature at present. Where the intention is clearly to establish a distance contract, eg in internet, telephone or postal banking, steps do need to be taken to ensure that pre-contract information and terms and conditions will be DMD-compliant by October.

## **2. COMPLIANCE MONITORING AND ENFORCEMENT TOPICS**

### **(i) Annual Statements of Compliance**

We have now published a summary of results of the 2003 ASC exercise in our Annual Report (see BCSB News below). Our Directors have asked us to record the value they place on the ASCs as an important feature of good regulatory practice. It may be helpful to give the following additional background on how we handle the review of the ASCs and the outcome.

Each of our non-executive Directors was given a selection of ASCs to review, reflecting a mixture of organisations with an assortment of queries. There were some useful comments about re-wording of questions and a slight concern over the infrequency of overall Code compliance monitoring within some subscribers.

There were a number of cases which did not warrant a 'No Action' report but nonetheless required the BCSB to follow up. There were a total of six subscribers in this category. Relationship Managers assigned to these subscribers followed up to ensure that we had written confirmation that the matters arising had been addressed.

There was one subscriber where we decided to bring the Compliance Monitoring review forward, as there were a number of small items which need to be addressed; whilst these involved limited customer detriment we felt they may indicate that the compliance culture had weakened since our previous visit.

As standard practice, the latest ASC is always reviewed by the Relationship Manager before a monitoring visit commences, so that any concerns, observations or items for follow up are included in the scope.

Fines were due for late submission of ASCs under Banking Code Rule 4.3, at the rate of £25 per business day for the first four weeks and £100 per business day thereafter. The two fines levied this year were for £100 and £500 respectively.

### **(ii) Themed reviews**

Since the last Bulletin, we have undertaken a number of themed reviews, to obtain a snapshot view of compliance with specific Code requirements across the industry, and further work is planned for the remainder of 2004.

Account switching: (Banking Code paragraphs 7.2 to 7.4; Business Banking Code paragraphs 7.1 to 7.4)

This review reflected a need to identify whether the shortened timescales (three working days) for provision of direct debit and standing order information were being met. It was prompted by a number of complaints that had been received at our Helpdesk and anecdotal evidence from subscribers that they were encountering delays in receiving information from certain banks and building societies, although none have been formally raised with us. The review of a sample of nine subscribers, generally from the top end of our risk model, identified that:

- In all cases, account switching is given priority
- There were problems with direct debit data required from originators (often not subscribers)
- All subscribers were monitoring their own performance but only one was formally monitoring the performance of other banks. Delays were generally addressed bi-laterally.
- Most banks made compensation payments, even when the fault lay with another bank.

We concluded that the process for account switching is generally working adequately well. We would encourage subscribers to continue monitoring their own and other institutions' performance to ensure that bi-lateral issues are resolved with minimum delay.

Interest rate downgrading (Codes paragraph 4.8)

With the expectation of forthcoming interest rate changes we wanted to check compliance with the downgrading provisions introduced in March 2003. Our sample of 12 subscribers was taken from across the risk model to ensure we included some with automated monitoring processes and some who use manual processes.

We concluded that satisfactory systems exist for the identification of downgrading occurrences and that in general, appropriate communications are being sent. We are likely to repeat this exercise if rates continue to rise.

We have started disciplinary action in one case where there was doubt that a downgrading had been identified at the time of occurrence and, although notifications were sent, we did not feel that they were compliant with the Code.

Credit card statements: currency transactions and promotional interest rates

This review of 29 card issuing subscribers was to identify whether these newly introduced provisions had been effectively embedded.

*Charges on currency transactions (Codes paragraph 10.3):*

This section applies to only 20 of the 29 subscribers sampled and of these, 3 were not compliant. The reasons for non-compliance were a misinterpretation of the Code

rules and oversight. The subscribers involved have now all arranged systems changes to ensure compliance.

*Warning of expiry of promotional rates (Codes paragraph 10.4):*

Again this applied to only 20 subscribers sampled with only 13 compliant. In some cases the non-compliance arose from not making any statement at all about the ending of a promotional rate. In one, it was that the advice was worded as an incentive to spend rather than a warning of an imminent increase in rate. We have now agreed new wording that has been adopted by the subscriber.

Our view was that the warning should be sufficiently prominent and clear to ensure that cardholders are alerted to the need to consider the implication of increased cost.

Financial promotions and advertising

Following discussions on the financial promotions regime with the FSA and at the Board, we undertook a pilot review of subscribers' press advertising for savings, loans and credit cards. The objective was to ensure that printed advertisements and promotions met the requirements of the Code and the Code of Conduct for the Advertising of Interest Bearing Accounts (CCAIBA).

We reviewed approximately 60 different advertisements and all provided a brief description of the product and the key terms. It was clear in all the advertisements how a potential purchaser should proceed with the application and this was either by telephone or mail response with appropriate further information readily available. None of the advertisements was in any way misleading. The review identified minor issues only and these have been taken up with the subscribers concerned.

Common to a number of examples was the use of small print. This reflected the size of the advertisement and in all cases, where calls were made to the advertised contact number, full product literature was available. Future work in this area will take account of any revisions to the Code in respect of print size or legibility.

We continue to increase the level of attention that we give to all forms of promotional material during subscriber reviews (including written media, radio and television advertisements and, if possible, internet advertising) The requirements of the Distance Marketing Directive will be included when they come into force.

Financial difficulties (Banking Code paragraphs 13.10 to 13.13; Business Code paragraphs 13.13 to 13.17)

We have started a review of the way that institutions deal with money advice agencies in the case of financial difficulties. This is a very common theme that we see in Helpdesk contacts and we are working alongside one of the CAB Social Policy Units to gather data. The review is based upon a random sample of cases being received and, typical of this sort of activity, lead time for trends to be discerned in each case tends to be months rather than

days or weeks. We are hopeful that we will have first results by the end of the summer and an update will be included in the next Bulletin.

#### Basic Bank Accounts

We have commenced a third annual round of mystery shopping into the provision of basic bank accounts, again working with NOP but with members of our own staff also conducting assessments. This also is an area where anecdotal evidence, especially from money advice agencies, would suggest that consumers are getting very varied experiences. These range from banks that act positively in helping people to open an account that meets their needs at one end of the scale, to those where customers find great difficulty in getting advice and information on the types of accounts available at the other. Our own brief mystery shopping pilot identified similarly polarised results. We wrote recently describing our plans to the Code Compliance Officers of the 17 subscribers to be covered, representing all the institutions listed on the FSA website as offering basic accounts. We expect to publish the results of this survey in the autumn, after discussing the issues arising with the industry.

#### **(iii) Savings account interest tiers: Codes paragraphs 4.8 and 6.4**

Yet again a specific point has arisen in connection with the downgrading provisions that we feel is worth wider circulation now, pending consolidation into the next edition of the Guidance to Subscribers.

Certain subscribers have reorganised the interest tiers of one or more of their savings accounts, in some cases taking the opportunity to set fixed or nominal rates on the lowest tier(s). Unless the change is such that no customer could be disadvantaged, which may be difficult to establish with confidence, such a change should be treated as a variation in terms and conditions, requiring advance notice and allowing time for switching or closure without extra charges or interest, in accordance with paragraph 6.4 of the Codes.

#### **(iv) Minor changes to terms and conditions: Codes paragraph 6.5**

The Board has recently agreed a No Action case for a subscriber that had introduced a number of minor enhancements to terms and conditions. The subscriber's policy, advised to customers in accordance with Banking Code paragraph 6.3, is to send personal notification of all amendments to Ts & Cs. In this instance, it was publicising the changes by newspaper advertisements and notices in branches and on its website, but the next opportunity to write to customers without an expensive special mailing was outside the 30-day period.

The Board has asked us to make it clear to all subscribers that we will be happy to be approached for similar dispensations where minor improvements for customers in Ts & Cs are being introduced.

#### **(v) Payment Protection Insurance: Codes paragraphs 8.6 and 16.5**

The Codes acknowledge that the sale of PPI is covered by the GISC's Private Customer Code or the Association of British Insurers' General Insurance Business Code, and will be moving to FSA regulation. There continues to be media interest in allegations of the mis-selling of PPI, and we continue to hear of cases of financial difficulty where expensive PPI policies have failed to provide protection when it is needed.

Because PPI is frequently sold in a package with personal loan or credit card products governed by the Banking Code or Business Banking Code, it is difficult for us to ignore the concerns. If there is a suggestion of making lending conditional on the purchase of the lender's insurance product, whether formally or through unreasonable sales pressure, then we have to look into the possibility of breach of paragraph 8.6.

We have recently been in conversation with one subscriber that has set up a working group to review its provision of PPI against customer needs as well as regulatory requirements, and we would be happy to hear of other similar initiatives.

#### **(vi) Disability Discrimination Act**

Reflecting the need to comply with the DDA, our website states that "Copies of the Banking and Business Banking Codes, including alternative formats such as Audio, Braille and Large Print, are available from Banks and Building Societies who subscribe to the Code(s)". Could Compliance Officers please check that their own institutions have made arrangements to meet customer requests for alternative formats?

#### **(vii) Business Banking Code paragraph 16.2: copies in branches**

While our monitoring shows that availability of copies of the personal Banking Code in bank and building society branches is now generally good, we have had evidence quoted to us that the same cannot be said of the Business Banking Code. Any outlet of a Business Banking Code subscriber that may be used by a business customer should hold copies ready to meet requests on the spot.

### **3. BCSB NEWS**

#### **(i) Annual Report 2003/04**

We have just published our Annual Report for the year to 31 March 2004. We are sending separate copies to the Chief Executives and Code Compliance Officers of all subscribers, and the Report is available on our website. We encourage you to read it and also the short supplement we have produced, entitled *The Case for Voluntary Regulation*, that looks back over the period since the BCSB's inception in 1999.

**(ii) New subscribers**

We are currently working closely with several prospective applicants on their projects to achieve compliance with all Code requirements, with one of our Relationship Managers allocated from the outset. We have now made it a standard policy to conduct a full monitoring visit before taking an application to our Board.

The Board has approved the application of Bank of Scotland Business Banking, whom we are pleased to welcome as a subscriber to the Business Banking Code.

**(iii) BCSB 'Roadshows' 2004**

We are holding our fifth series of 'roadshow' seminars for compliance officers in late October and early November. As last year, the venues will be in Belfast, Edinburgh, London, Manchester and the West Midlands. We are pleased to confirm that attendance will be free for the first time, for up to three delegates from each subscriber.

The dates have been chosen in the expectation that Elaine Kempson's report and the industry response will have been published, so that we can devote a good proportion of the time to discussing practical preparations for the changes taking effect in March 2005.

We again plan an interactive workshop approach and we would welcome any suggestions you would like to make on the content or format of the seminars. The sooner you can let us have these, addressed to Adrian Lloyd

([adrianlloyd@bcsb.org.uk](mailto:adrianlloyd@bcsb.org.uk)) or Paul Smith ([paulsmith@bcsb.org.uk](mailto:paulsmith@bcsb.org.uk)) please, the better chance we will have of incorporating them.

We are now ready to accept registrations and are sending a copy of the form with this Bulletin.

**(iv) BCSB User Group**

While we await Elaine Kempson's full recommendations we felt that a summer User Group meeting would be of limited value, and we have the roadshows in the autumn. We therefore plan to have the next User Group meeting around the turn of the year, and will write to members nearer the time.

**(v) BCSB people**

As Richard Farrant mentions in the Annual Report, he is resigning at the end of 2004, slightly ahead of the end of his second term as Chairman. Our Deputy Chairman, Gerard Lemos, will be stepping up to take his place. We issued a press release announcing Gerard's appointment in March.

Subscribers for whom Liz Thompson has been our Relationship Manager will know that she is expecting her first baby next month and will shortly depart on maternity leave. We all wish her a safe delivery and every joy to her and Neill with their addition to the family.

We are very pleased that Elizabeth Paterson has joined us on secondment from the HBOS Group, to cover Liz's absence and look after her portfolio of subscribers in Scotland and the North of England.

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