

APPENDIX A
BCSB SUBMISSION TO INDEPENDENT REVIEWER,
FEBRUARY 2004

DRAFTING SUGGESTIONS TO PUT BEYOND DOUBT THE
ENFORCEABILITY OF THE KEY COMMITMENTS

1. CHANGES TO THE BANKING CODE:

The Banking Code 1 March 2003 Edition

1 Introduction

What the code covers

1.1 This is a voluntary code which sets standards of good banking practice for financial institutions to follow when they are dealing with **personal customers** in the United Kingdom. It provides valuable protection for you and explains how financial institutions are expected to deal with you day-to-day and in times of financial difficulty.

The code applies to:

- current accounts, including **basic bank accounts**;
- **card** products and services;
- loans and overdrafts;
- savings and deposit accounts, including mini cash and TESSA ISAs; and
- payment services, including foreign-exchange services.

It does not cover mortgages, investments or insurance. These are separately regulated by the Financial Services Authority or by other codes. There is a list of these codes in section 16.

Also, this code does not cover premium bonds.

About this code

1.2 As a voluntary code, it allows competition and market forces to work to encourage higher standards for the benefit of customers.

Within the code, 'you' means the customer and 'we' means the financial institution the customer deals with.

You can check which financial institutions follow the code by contacting the Banking Code Standards Board, the independent organisation which monitors how well financial institutions are meeting the code. (Their contact details are on page 19.) The types of financial institution currently include:

- banks;
- building societies;
- credit card companies; and
- National Savings and Investments.

The rules of the code are measured in the context of the four key commitments found in section 2. These commitments are also a general statement of the fundamental obligations of the financial institutions that subscribe to the code. In that sense, the four Key Commitments have two purposes:

- they set out the context in which the obligations in the rest of the code must be met;
and
- they are free-standing obligations themselves against which subscribers must operate irrespective of whether such conduct is contained in a separate code rule.

Deleted: standards

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Not all the financial institutions covered by this code offer all the products and services listed in section 1 above.

Unless it says otherwise, all parts of this code apply to all the products and services listed above, whether they are provided by branches, over the phone, by post, through interactive TV, on the internet or by any other method.

Throughout this code, words in the text which are shown in **bold** print are defined in the glossary at the end of the code.

This revised edition is effective from 1 March 2003 unless otherwise shown.

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2. CHANGES TO THE GUIDANCE FOR SUBSCRIBERS:

THE BANKING CODE MARCH 2003 EDITION

Guidance for subscribers

Preface

The revised Banking Code comes into force on 1 March 2003. The Code was revised following a wide-ranging public consultation exercise conducted by Professor Elaine Kempson, the independent person appointed in January 2002 to review the Banking and Business Banking Codes.

The Banking Code is not intended to be read as a rigorous legal document. It has been written for practitioners and customers, not for lawyers. This guidance is issued by the Code sponsors, ie the British Bankers' Association, The Building Societies Association and the Association for Payment Clearing Services as an aid to understanding and implementation of the new version of the Code.

Subscribers should ensure that they abide by the spirit, as encompassed by the key commitments, as well as the letter of the Code, which also includes the Key Commitments themselves. Common sense should be used in interpreting the Code. This guidance will be made available on request to all interested parties, including members of the public.

Subscribers remain free to interpret the Code, but should be aware that this guidance represents a general interpretation of the Code, which may be used by the Banking Code Standards Board, the Financial Ombudsman Service and others in determining industry standards. This version of the Code includes more detail on specific service levels than previously (for example, in regard to current account transfer). Subscribers should use all reasonable endeavours to meet these service levels and should determine the most appropriate means of measuring compliance.

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THE BANKING CODE

Guidance for subscribers

1. Introduction

[text unchanged]

About this Code

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The rules of the code measured in the context of the four key commitments found in section 2. These commitments are also a general statement of the fundamental obligations of the financial institutions that subscribe to the code. In that sense, the four key commitments in section 2 have two purposes:

- they set the context in which the obligations in the rest of the code must be met; and
- they are free-standing obligations themselves against which subscribers must operate irrespective of whether such conduct is contained in a separate code rule.

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[section of text unchanged]

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2. ***Our key commitments to you***

The four key commitments are meant to underpin the whole subscriber/customer relationship. If there is any doubt about the meaning of a particular provision in the Code, the key commitments should provide clarification as to the spirit of the Code. The key commitments should be considered carefully as they may introduce obligations which could be implied into the subscriber/customer relationship.

However, in addition, the key commitments are rules themselves which are capable of breach even without a breach of any of the other rules in the Code. Due to their dual purpose, such key commitments remain separately categorised from the rest of the Code text.

Breaching a key commitment makes a subscriber liable to disciplinary sanctions. In determining whether a key commitment has been breached, it is necessary to look to the standard of conduct required by the key commitment in question. Under each of the key commitments, the onus will be on the Banking Code Standards Board to show that a subscriber has been at fault in some way. What constitutes 'fault' varies between different key commitments. Some of the key commitments are absolute, for example making sure products and services comply with relevant laws and regulations. Others require that the subscriber to act reasonably, for example considering cases of financial difficulty sympathetically and positively.

We promise that we will do the following:

- a Act fairly and reasonably in all our dealings with you by:**
- *meeting all the commitments and standards in this code: in the products and services we offer, and in the procedures our staff follow;*
 - *making sure our products and services meet relevant laws and regulations;*
 - *having secure and reliable banking and payment systems;, and considering cases of financial difficulty sympathetically and positively.*

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