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Dear Elaine

2004 REVIEW OF THE BANKING CODES

I am writing on behalf of the Banking Code Standards Board in reply to your two letters of 26 January 2004, relating to the Banking Code and the Business Banking Code respectively.

We have prepared a single response, since the majority of points apply to both Codes. On the assumption that the Business Banking Code will continue to mirror the Banking Code as far as possible, our recommendations are intended to apply to both Codes except where this is clearly inappropriate.

The attached document is in two parts, the first setting out in detail our recommendations for changes to the Codes, and the second replying to key questions in your Consultation Papers. The detailed recommendations follow the order and use the paragraph references of the 2003 editions of the Codes throughout.

We welcome the fact that this review will encompass the Guidance to the Code. The subscribing banks and building societies acknowledge that our monitoring responsibility includes the Guidance as well as the Codes and there are important topics that will probably be best addressed through changes to the Guidance. For the sake of brevity, we have generally referred to changes to the Codes, as in a number of cases the issues may need to be addressed by changes to both the Codes and the Guidance. We have indicated where we feel a matter affects the Guidance for Subscribers only.

Our submission reflects the views of the independent members of our Board of Directors, who form a majority. The Board includes the Chief Executives of the three sponsoring Trade Associations, but we recognise that the Associations will be responding separately and may express differing views on some points.

Some of the issues represent moving targets, particularly those that involve other regulatory bodies such as the FSA and the OFT, and we would like to feel able to modify our recommendations in the light of developments during the coming months.

Our comments are based on our practical experience of monitoring and enforcing the Code over the past four years. They also take account of market research we have conducted: we can provide a summary of any of this research if you would like to see it.

We have discussed our recommendations briefly with our BCSB User Group of subscribers, and we are placing a copy on our website.

In summary, we judge the key areas for change to be:

- Enforceability of Key Commitments (section 2)
- Changes in interest rates (paragraph 4.4)
- Financial Assessment (paragraph 13.1)

We continue to believe that the Codes deliver significant consumer benefits and that our role in monitoring and enforcing them are key to their effectiveness and wider credibility. The growing number of approaches from the public to our helpdesk is evidence that the new Key Commitment to publicise the Codes is being successfully fulfilled, particularly through the wide distribution of the fliers.

We strongly support the process of revision which you are leading.

Yours sincerely

SEYMOUR FORTESCUE

Banking Code Standards Board

2004 REVIEW OF THE BANKING CODES: PART I - DETAILED RECOMMENDATIONS

(Section and paragraph references are to the 2003 editions of the Codes)

1. Key Commitments (section 2)

We note that the FSA is enabled under statute to take action based on its Principles for Businesses. The legal advice we have received on whether the BCSB can similarly take disciplinary action based on the Key Commitments standing alone has been ambivalent. This issue needs to be resolved beyond doubt in order to support the claim that we can enforce the spirit as well as the letter of the Code, and we attach drafting suggestions to bring this about (**Appendix A**). This was a topic we raised for attention in the Guidance in our submission to your 2002 Review.

2. Clearing Times (paragraph 3.3)

Recent research we have conducted has revealed widespread differences in when credits start to receive interest on savings accounts. There is a need for greater transparency **or** the setting of minimum standards. The OFT is also looking at the subject and appears to favour the latter (for example setting a ceiling on the length of time it takes to pay interest on items deposited), which on balance we would support. In addition, we believe the Code should require greater transparency and this is the kind of information that could be included in a Summary Box for savings accounts (see item 6. Terms and Conditions – Summary Box below).

We have also seen some evidence recently of what may be a newly emerging problem. Both from complaints to our helpline and from the media, we gather that people are having their accounts debited for ‘bounced’ cheques well after they could reasonably have assumed the cheque had been cleared for fate, or irrevocably ‘paid’. It is not at present clear whether this is partly the result of consumers and banks having different understandings of the meaning of words like ‘cleared’ and ‘paid’. This risks seriously undermining confidence in the cheque clearing system and needs further investigation. We are not sure any remedy will necessarily be best achieved by changes to the Codes, but we wish to flag this as a possible area requiring attention. We have also written to APACS on this point.

3. Notification of interest rate changes (paragraph 4.4)

There is unfinished business from the previous Code review, which we assume you are as keen as we are to see brought to a satisfactory conclusion. Please also see our response to Q4a from your Consultation Paper.

At present non-branch customers receive personal notification while branch customers must rely on notices in branches and newspaper advertisements. Your last review acknowledged that this distinction is no longer realistic and the intention was to make the Code delivery channel neutral, by moving to a regime of universal personal notification, subject to realistic exceptions (eg *de minimis* provisions) to keep costs within bounds. The move to wider personal notification was also intended to address the mischief whereby interest rates on savings accounts could be steeply reduced without customers becoming aware, which the old superseded account provisions had been designed to address (but only for accounts that were closed to new business or no longer being ‘actively promoted’).

It may also be necessary to extend the notification arrangements to some or all current accounts paying interest.

Definitive guidance from the FSA on the Unfair Terms in Consumer Contracts Regulations 1999, as the Qualifying Body for implementing this part of the EU Directive, is still awaited and now long overdue. We believe that the arguments in favour of moving to greater personal notification have if anything been reinforced by the passage of time, and we very much hope that the FSA will publish its proposals in time for them to be considered in parallel with your review.

4. ATM Charges (paragraph 5.8)

Certain subscribers have screen messages that tell cardholders that their card issuer may make a charge for withdrawals, even though the ATM owner is aware that for debit cards such a charge will not be made. This is not helpful for cardholders and the Codes should not permit such redundant messages. This was also a topic we raised as a matter for the Guidance in our submission to your 2002 Review.

5. Terms and Conditions – print size (section 6)

The Treasury Committee in its hearings on transparency of credit card charges made a major issue of the excessively small print in some of the literature it received. This echoed our own experience in reviewing the terms and conditions (Ts & Cs) supplied during many of our monitoring visits. The spirit of the Codes requiring the provision of information in clear (and by implication legible) English is evidently not sufficient, so we have concluded that the Codes should mandate a minimum print size (for example minimum upper case height 2.1mm) and acceptable contrast between print and background (to be defined in terms of printing and publishing trade standards).

6. Terms and Conditions – Summary Box (section 6)

We recommend that your review explores carefully the possibility of requiring the inclusion of a Summary Box of key points, to be incorporated prominently in Ts & Cs and/or promotional materials for current and savings accounts (also to be printed on statements) similar to what the industry has promised to the Treasury Committee for

credit cards (see item 11. below). This could be a *quid pro quo* for a higher *de minimis* exemption from sending the notifications under paragraph 4.7 of rates that have applied during the year. We attach at **Appendix B** a suggestion for what might be included, and recommend that any template finally agreed should be incorporated in the Guidance.

7. Distance Marketing Directive (not for Business Banking Code) (Paragraph 7 and Glossary)

The Banking Code will need to reflect the provisions of the DMD. In particular, it will be necessary to align the definition of ‘personal customer’ in the Code with that of ‘retail customer’ in the DMD, and the Code’s ‘cooling off period’ with the DMD’s ‘rights of withdrawal’. We propose, however, to leave detailed drafting in the hands of the Sponsors, and we recognise that transposition of FSA rules into the Code to meet a statutory requirement will differ in nature from the voluntary adoption of other provisions.

One point to be considered in this context is the territorial coverage of the Banking Code, given the need to encompass outbound distance marketing to other Member States under the DMD. In your last review you concluded, in the light of practical problems with sections of the Code setting specific timetables, that the Code should continue to apply to UK account-holders who are resident in the UK, despite a strong case being made for extending it to all customers, wherever resident, holding accounts in the UK. The time may have come to change the territorial coverage and deal with any practical problems by means of waivers or supplementary Guidance.

8. Branch Closure (Paragraph 7.6)

The Code requires customers to be given eight weeks’ notice of branch closure, or twelve weeks’ in the case of the last branch within a five mile radius. The Campaign for Community Banking argue that the five miles should be ‘as the bus travels’ rather than ‘as the crow flies’. They also favour one, not five, miles for suburban branches. They claim that the promise by certain banks not to close ‘the last bank in town’ is diluted by Banking Code parameters. We are inclined to support their arguments regarding five miles being measured by road and a one mile maximum for suburban branches. However, we think that the test should be the ‘last provider of banking services’ rather than the ‘last branch’, to take account, for example, of the growing availability of deposit and withdrawal facilities through Post Offices.

9. Credit Card Statements – APRs (Paragraph 9.2)

We agreed with your recommendation at the last review that the Cruickshank proposal to require APRs to be shown on Credit Card Statements should not be pursued at the time, because of the difficulty of calculating meaningful APRs. With the prospect, following the Consumer Credit White Paper, that an agreed method of calculating APRs in relation to credit cards will be found, we believe that the Guidance should provide that the APR will then be shown on every credit card statement.

10. Foreign Exchange Rates (paragraph 9.11)

We have recently conducted research into the availability of information on exchange rates applied to retail overseas money transfers, which are important for expatriates, for those wishing to send money home to their families, for those with second homes abroad and for a number of small businesses. We would be happy to share the details of this research with you.

We found that it is difficult to shop around. Customers are largely tied to their own bank, partly by the anti-moneylaundering regime. Although banks are prepared to provide indicative or definitive rates in response to a specific request, it is not easy to obtain comparative data other than by visiting or telephoning individual providers. The amount of such information on websites is minimal. As a result, there is a lack of transparency.

We have considered whether the Codes should mandate the publication of the margin by which subscribers adjust their rates from some central rate, which would enable comparisons to be made easily. However it is not clear that this fits the way the majority of banks currently operate: they may, for example, vary margins on the ‘buy’ or ‘sell’ side according to supply and demand for a currency through their own outlets.

What we do recommend is that the Code should mandate that rate sheets must be available for customers to retain and that they should also be published on the internet where this is technically feasible. This would make it very much easier for an individual, small business or the media to carry out research on which bank consistently offers the most favourable rates.

11. Summary (or Schumer) Box for Credit Cards (section 10)

The Code will need to refer to the Summary Box for credit cards (due to be introduced in March 2004), developed under the aegis of APACS, and clarify the documents on which it must appear; we feel these should include card statements. Summary Boxes should include Base Rate information.

The Codes must provide for a robust commitment to and mechanism for regular review of the content of Summary Boxes by subscribers.

We also favour the introduction of a Summary Box for current and savings accounts (see item 6. above).

12. Card reissue (paragraph 10.1)

The recent controversy over Marks & Spencer Financial Services sending out unsolicited credit cards to replace their store cards requires further Code clarification. The answer appears to be to spell out that a card cannot be sent unsolicited as a replacement unless it

is the same kind of card (ie ATM card, debit card, credit card, charge card, store card, etc) operating on an existing account.

13. Disputed card transactions (paragraph 10.2)

Interest should not be added while an item remains under investigation, until the dispute by the customer is found to have no merit.

14. Credit card continuous payment authorities (section 10 – new provision)

A means should be found for customers to instruct credit card issuers to cancel continuous payment authorities, with a commitment in the Codes to achieve this by a specific date. Credit card customers are currently exposed to continuing payments being made to service providers who fail to accept cancellation instructions, without having the ability to tell their card company to stop the payments in the way they can with a direct debit or standing order from a bank account.

15. Credit card repayments (section 10 – new provision)

There should be a requirement that minimum payments must always be at least sufficient to cover interest. We also have some sympathy with the suggestion by the Treasury Committee that card issuers should tell customers that making the minimum repayment on a credit card balance would take xx years to achieve full repayment. We understand, however, that the major card issuers have agreed to show wording on the lines of ‘we do not recommend you pay the minimum amount’ on statements. If such a health warning is adopted under the Codes, it would not also be necessary to refer to the number of years required to repay in full.

16. Credit card cheques (section 10 – new provision)

We would stop short of seeking a ban on the unsolicited issue of blank credit card cheques, which represent only another method by which customers can avail themselves of the credit card limits they already have. We support the guidelines that have been drafted by APACS, which should be mentioned in the Codes or at least the Guidance. However we do not see the justification for sending pre-completed cheques, enticing customers to use them to borrow specific amounts on their credit cards, and we believe the Codes should prohibit this practice, either directly or through an addition to the APACS guidelines.

We believe the risks in this context are such that the Codes’ requirement that advertising and promotional material should be fair and not misleading (paragraph 8.1) deserves repetition in the Guidance on the subject.

17. Credit Assessment (paragraph 13.1)

There is relatively little in the Code about credit assessment. Given current concerns about personal overindebtedness, we recommend the following additions to the Code:

- A requirement that any issue of a credit card or increase in an overdraft or credit card limit should be preceded by a credit reference agency check.
- Encouragement of improved information-sharing through the credit reference agencies, including ‘white’ and ‘grey’ data.

It will be important to keep the government’s Consumer Credit White Paper published in December in view, and it may be appropriate to defer to legislative developments in certain instances, but we note that the Code mechanism is able to deliver change more rapidly than is typically the case with statutory provision.

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Banking Code Standards Board

2004 REVIEW OF THE BANKING CODES: PART II - RESPONSE TO CONSULTATION PAPERS

Q1 (personal Code) Q2 (Business Code) Key omissions

Part I of our submission sets out several recommendations for additions to the Codes. We would however highlight, firstly, the desirability of completing the unfinished business remaining from the last review, in relation to interest rate change notifications. Secondly, although not strictly an omission from the Codes, there will be fairly urgent steps needed to align the personal Code with the rules to be published by the FSA in March or April to implement the Distance Marketing Directive by the deadline of 9 October 2004.

Q1 (Business Code)

We have not encountered any particular areas where the existing alignment of the Codes has caused difficulties.

Q2 (personal Code) Q3 (Business Code) Sections that are no longer relevant or have been superseded

While keen to see any redundant features of the Codes removed, we have not on this occasion identified any specific provisions that have clearly outlived their usefulness.

Q3a Basic bank accounts (personal Code only, paragraph 3.1)

In 2002, the industry did not accept your precise recommendation on the provision of information about a basic bank account, but we were pleased that some strengthening of the requirement was adopted in the 2003 Code. We are not proposing further change in this review – the emphasis should now be on compliance. However, we are generally critical of the policy of subscribers over charging for unpaid items, on basic accounts in particular, where the level of charges may have a disproportionate effect on the finances of less affluent customers.

Q4a Changes in interest rates (paragraph 4.4)

Arguably the most important change recommended in your last review has not achieved its intended outcome, nor even been implemented. We are disappointed that the move to personal and delivery channel neutral notification of interest rate changes has not happened because the expected guidance from the FSA on the Unfair Terms in Consumer Contracts Regulations 1999 has not been issued. We note especially that the removal of the previous ‘superseded account’ protection for savings account customers was largely accepted as a *quid pro quo* for enhanced rate change notification arrangements.

We are not opposed to the use of fairly general wording in the Code itself, but the Guidance should have been able to move away from the obsolescent ‘branch versus non-branch’ alternatives by now. Equally, if your review succeeds in identifying a specific way forward, we would be happy to see any clear, simple and durable provisions spelt out in the Code itself.

Q5a Downgraded accounts (paragraph 4.8)

The ‘downgrading’ provisions have given rise to much interpretative debate in the compliance community to address increasingly complex scenarios, but solutions have been found. We shall welcome the opportunity to consolidate a number of conclusions into the new Guidance. In general we feel that this change provided valuable additional protection for customers and should be retained.

The present Guidance defines downgrading in terms of 0.5% against Base Rate, a 12 month rolling period and a *de minimis* figure of £250. The interest rate and inflation environment has not changed significantly and we feel these parameters are still appropriate. We are aware of only one subscriber so far having had reason to issue a downgrading notification, and this was the result of a restructuring of tiers within a savings account, rather than an across the board rate reduction relative to Base Rate.

Q5b Detriment to subscribers or consumers (paragraphs 4.4 and 4.8)?

Continuing media comment, warning savers to check they are not receiving derisory rates, suggests that there is still a gap to be filled by better rate change notifications.

Subscribers have had to dedicate some resource to installing arrangements to ensure compliance with Paragraph 4.8, but this is now sunk cost. Experience in the last year suggests that in the event few downgrading notices will be issued. This may be evidence that the Codes are proving effective in discouraging a detrimental practice.

Q6 (personal Code) Q7 (Business Code) Account transfer (personal Code paragraphs 7.2 to 7.4, Business Banking Code paragraphs 7.1 to 7.4)

We are about to conduct a review of the working of the new account transfer obligations, but so far we have not become aware, for example through complaints to our helpdesk, of any significant problems. Anecdotal and media evidence suggests that consumer perceptions and experience of account switching have improved. You may recall that we had commissioned mystery shopping from NOP prior to your last review that suggested that the problems were more perceived than real.

We would however reiterate a point made in our last submission that has not been acted upon. Attention has been focussed, with considerable success, on switching direct debits and standing orders. However, failure to transfer or re-direct credits (eg salary, pension or dividends) can cause just as many problems. We still recommend that the ‘old’ bank

or building society should be required to forward credits for six months after transfer and closure of the old account.

Q7 (personal Code) Q8 (Business Code) Customer/Consolidated Annual Summary Statement

The consultation paper mentions the qualitative research we did using NOP in 2003. On the evidence so far there is little consumer enthusiasm for a CASS to justify the BCSB advocating its introduction, and the benefits would have to outweigh the likely significant implementation and running costs which customers would have to bear in the end. Accordingly, we do not recommend change to the Codes at this review.

Q8a (personal Code) Checking borrowers' ability to repay

No comment (question addressed to subscribers)

Q8b (personal Code) Q8(repeated) (Business Code) Financial assessment (paragraph 13.1)

The last review led to a slight strengthening of the requirements in the personal Code Guidance relating to credit assessment. This is an area that has been a focus of important other work, especially the DTI Over-indebtedness Taskforce. We would support a further step forward in the current review, and our attached recommendations contain specific suggestions. We concentrate on the role of the credit reference agencies as a route to dealing with the problems of people who accumulate multiple debts.

Q9 Financial crime resulting from disclosure of reasons for loan refusal (personal Code paragraph 13.3, Business Code paragraph 13.6)

We have no direct experience on which to base a comment, but we hope that concerns about fraud need not militate too heavily against provisions designed to promote a more mature and open relationship with honest borrowers.

Q10 (Business Code) Security and guarantees (paragraphs 13.7 and 13.8)

Our compliance monitoring activity has not identified problems with the Code content on security and guarantees, except for occasional interpretational difficulties over the Guidance on the meaning of “unlimited” (also applies to personal Code Paragraph 13.4). We believe this is simply a drafting issue and attach a suggested revision at Appendix C.

Q10a and 10b (personal Code) Q11 (Business Code) Financial difficulties (paragraphs 13.10 to 13.13 (personal) / 13.13 to 13.16 (Business))

We continue to keep these sections high on our list of priorities for themed monitoring work, and cases of financial difficulties are perhaps inevitably one of the most common reasons for approaching our helpdesk. However we see this as a compliance issue and

we have not encountered concrete evidence that the content of the revised Guidance needs significant amendment. The emphasis should be on helping customers avoid getting into difficulties in the first place by improved assessment of ability to repay (see Q8b above).

Q11 (personal Code) Q14 (Business Code) Reference to legislation (and other regulation) (paragraph 2a)

It is appropriate that the BCSB does not have direct monitoring or enforcement responsibility for legislation, regulations or other codes of practice, except the Code of Conduct for the Advertising of Interest Bearing Accounts. However the acknowledgement in the Codes of subscribers' wider compliance responsibilities is beneficial and forms a basis for the ability we have under the Banking Code Rules to raise any serious concerns we have with other regulatory bodies. The concerns about PPI considered at your last review are an example. We favour maintaining the *status quo*.

Q12a and 12b Frequency of Code reviews

We support continuation of a biennial frequency of review. Although this means the process of consultation, publication and implementation is almost continuous, with concomitant resource implications, we believe the benefits to consumer protection and the reputation of the industry clearly outweigh the costs. There is frequent talk of the ever-increasing pace of technological and other change, and the ability of the Codes to respond quickly is a major factor in their favour compared with statutory alternatives.

Q13a and 13b (Business Code only) Competition Commission 'informal remedies'

We have limited first-hand experience on which to comment. Our main concern would be about our ability to monitor and enforce compliance were these recommendations transposed into the Business Banking Code. This particularly applies to the proposed "commitment to take the minimum practical security" and the inevitable scope for dispute in individual cases. The views of the Ombudsman would be helpful on this point.

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