

BANKING: CONDUCT OF BUSINESS SOURCEBOOK INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 139(4) (Miscellaneous ancillary matters);
 - (3) section 145 (Financial promotion rules);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2009.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Principles for Businesses are amended in accordance with Annex B to this instrument.

Making the Banking: Conduct of Business sourcebook (BCOBS)

- F. The Financial Services Authority makes the rules and gives the guidance in Annex C to this instrument.

Notes

- G. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are intended for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Banking: Conduct of Business Sourcebook Instrument 2009.
- I. The sourcebook in Annex C to this instrument may be cited as the Banking: Conduct of Business sourcebook (or BCOBS).

By order of the Board
23 April 2009

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions into the appropriate alphabetical position. The text is all new and is not underlined.

banking customer

(in *BCOBS*):

- (a) a *consumer*;
- (b) a *micro-enterprise*; or
- (c) 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.

BCOBS

the Banking: Conduct of Business sourcebook.

charity

(in *BCOBS*) includes:

- (a) in England and Wales, a charity as defined by section 1(1) of the Charities Act 2006;
- (b) in Scotland, a charity as defined by section 106 of the Charities and Trustee Investment (Scotland) Act 2005; or
- (c) in Northern Ireland, a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008 or, until that section comes into force, a body which is recognised as a charity for tax purposes by Her Majesty's Revenue and Customs.

dormant account

[Text to follow in a later instrument]

retail banking service

an arrangement with a *banking customer*, under which a *firm* agrees to accept a *deposit* from a *banking customer* on terms to be held in an account for that customer, and to provide services in relation to that *deposit* including but not limited to repayment to the customer.

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

~~Accepting deposits and issuing electronic money~~

- 1.1.3 G The ~~Principles~~ apply with respect to ~~regulated activities~~ generally, but, in applying the ~~Principles~~ with respect to ~~accepting deposits and issuing electronic money~~ the FSA will proceed only in a *prudential context*. That is to say, in this context, the FSA would not expect to exercise the powers brought into play by a contravention of a *Principle* unless the contravention amounted to a serious or persistent violation which had implications for confidence in the *financial system*, or for the fitness and propriety of the *firm* or for the adequacy of the *firm's* financial resources. ~~[deleted]~~

...

- 3.2.1 R *PRIN* applies with respect to the carrying on of:
- (1) *regulated activities*;
 - (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
 - (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, ~~and insurance mediation activity~~ and accepting deposits.

Annex C

Banking: Conduct of Business sourcebook (BCOBS)

Insert the following new sourcebook after the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) in the block of the Handbook titled “Business Standards”. The text is all new and is not underlined.

1 Application

1.1 General application

The general application rule

- 1.1.1 R 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.

Modifications to the general application rule

- 1.1.2 R The general application *rule* is modified in the chapters of this sourcebook for particular purposes.
- 1.1.3 R Except as provided for in *BCOBS* 1.1.4R, this sourcebook does not apply to:
- (1) *payment services*; 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*.
- 1.1.4 R
- (1) Chapters 2, 5 and 6 of *BCOBS* apply to *payment services*.
 - (2) Chapter 3 of *BCOBS* applies to *payment services* with the modifications set out in *BCOBS* 3.1.2R (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 the *Payment Services Directive*.

2 Communications with banking customers and financial promotions

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.
- 2.2.2 G 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*.
- 2.2.3 G 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 4.7.1R* (Direct offer financial promotions), *COBS 4.10* (Systems and controls and approving and communicating financial promotions) and this chapter of *BCOBS*.

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

2.3 Other general requirements for communications and financial promotions

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.

2.3.2 G 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.

2.3.3 G 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.

2.3.4 G 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*.

2.3.5 G 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.

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

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 any information refers to a particular tax treatment or rate of interest

payable, a *firm* must ensure that it prominently states that the tax treatment or the rate of interest payable depends on the individual circumstances of each *banking customer* and may be subject to change in the future.

- 2.3.9 G 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.

2.4 Structured deposits, cash deposit ISAs and cash deposit CTFs

- 2.4.1 G If a *financial promotion* relates to a *structured deposit*, rules in COBS 4.6 (Past, simulated past and future performance) will also apply.
- 2.4.2 G If a *financial promotion* relates to a *cash deposit ISA* or *cash deposit CTF*, COBS 4.7.1R (Direct offer financial promotions) also applies.

3 Distance communications

3.1 Distance marketing

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 disclosure rules

- 3.1.2 R (1) Subject to (2), a *firm* must provide a *consumer* with the distance marketing information (*BCOBS 3 Annex 1R*) 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 1R*.

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

- 3.1.3 R 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*]

- 3.1.4 R 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*]

- 3.1.5 R 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

- 3.1.6 R 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*]

- 3.1.7 G 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

- 3.1.8 R 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

- 3.1.9 R 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*]

- 3.1.10 R (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

- 3.1.11 R 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 2R*) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (*BCOBS 3 Annex 1R*) 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

- 3.1.12 R A *firm* may provide the distance marketing information (*BCOBS 3 Annex 1R*) 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

- 3.1.13 G 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

- 3.1.14 R 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

- 3.1.15 R (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

3.1.16 R 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

3.1.17 R 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*]

3.2 E Commerce

Application

3.2.1 R 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

3.2.2 R 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 1R*), 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*]

- 3.2.3 R 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*]

- 3.2.4 R 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*]

- 3.2.5 R 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

- 3.2.6 R 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*]

3.2.7 R 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.

3.2.8 R 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

3.2.9 R 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*]

3 Annex 1R Distance marketing information

This Annex belongs to *BCOBS* 3.1.2R (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> EEA State 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</i> 4), 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</i> 6) 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>]	

3 Annex 2R Abbreviated distance marketing information

This Annex belongs to *BCOBS* 3.1.11R

(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</i> 6) 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>]	

4 Information to be communicated to banking customers

4.1 Enabling banking customers to make informed decisions

The appropriate information 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.

4.1.2 G (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 make a change to the terms and conditions or charges that apply to a *retail banking service* that will be to the disadvantage of a *banking customer*, it should provide reasonable notice to the *banking customer* before the change takes effect, taking into account the period of notice required by the *banking customer* to cancel the contract for the *retail banking service*.

4.1.3 R 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 requirements (see *BCOBS 3.1*) (if

applicable).

4.1.4 G 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 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;
- (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.

4.1.5 G 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.
- 4.1.6 G 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.
- 4.1.7 G 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.

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.

5 Post sale

5.1 Post sale requirements

Service

- 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.
- 5.1.2 G 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.
- 5.1.3 G 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

- 5.1.4 G *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

- 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*.
- 5.1.6 G 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*.
- 5.1.7 G 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.
- 5.1.8 G 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

- 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*.

6 Cancellation

6.1 The right to cancel

Introduction

- 6.1.1 R Except as provided for in *BCOBS* 6.1.2R, 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*]

- 6.1.2 R 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*).
- 6.1.3 G 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

- 6.1.4 R 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

- 6.1.5 R (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* 3.1.2R to 3.1.5R (the distance marketing disclosure rules)).

6.2 Exercising the right to cancel

- 6.2.1 R 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]

- 6.2.2 G 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

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

6.3 Effects of cancellation

- 6.3.1 R 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

- 6.3.2 R (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*]

6.4 Obligations on cancellation

Firm's obligation

6.4.1 R 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* 6.3.2R. 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

6.4.2 R 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*]

6.4.3 R 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.

6.5 Other applicable legislation

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

Schedule 1

Record-keeping requirements

Notes:

- 1 The aim of the *guidance* 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	Contents of record	When record must be made	Retention period
<i>BCOBS</i> 6.2.3R	Cancellation: exercise of right	Exercise of the right to cancel	Date of exercise	At least three years

Schedule 2

Notification requirements

There are no requirements for notification in *BCOBS*.

Schedule 3

Fees and other required payments

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

Schedule 4

Powers exercised

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).

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

- section 157(1) (Guidance).

Schedule 5

Rights of action for damages

- 5.1 The table below sets out the *rules* in *BCOBS* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
- 5.2 If a “Yes” appears in the column headed “For private person?”, the *rule* may be actionable by a *private person* 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 *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
- 5.3 The column headed “For other person?” indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* 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	

Schedule 6

Rules that can be waived

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