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& financial services



## **The Lending Code sponsors' response to the 2010 Independent Review of the Code**

### **Introduction**

The Lending Code is 'sponsored' by the three main industry trade associations: the British Bankers' Association (BBA), The Building Societies Association (BSA) and The UK Cards Association. The Code sets standards of best practice in dealing with personal and micro-enterprise customers. It does not cover the commercial pricing of products and services.

This paper is the formal response of the Code sponsors to the independent review of the Lending Code carried out between June 2010 and November 2010.

The review was carried out by Professor Lorne D Crerar, an independent consultant, on behalf of the Lending Standards Board. A three month formal consultation period invited views from all stakeholders and interested parties. The independent reviewer received 33 submissions and held a series of bilateral and roundtable meetings to explore stakeholders' views in more detail.

The independent reviewer's report was presented to the Code sponsors in November 2010 and is publicly available on the Lending Standards Board and Code sponsors' websites.

This paper outlines the changes that will be made to the Lending Code as a result of the independent review, to further improve the services that customers receive from Code subscribers.

### **Executive Summary**

We will make more than 30 new additions to the Lending Code in response to the independent review. The key changes focus on two key areas of lending – the credit assessment process and the sympathetic and positive treatment of customers in, or at risk of, financial difficulty – but new provisions also extend to each section of the Code and to the way in which we will promote the Code's protections to customers.

In response to requests from the majority of respondents to the review we are introducing two customer-facing Lending Code documents, one each for personal customers and micro-enterprise customers. These documents will provide an introduction, in plain language, to the Code's key commitments and from April 1<sup>st</sup> will be available online and in branch. Additionally, from July 1<sup>st</sup> onwards all subscribers to the Code will provide these documents to their new lending customers.

The 2011 Lending Code will include stronger credit assessment requirements to ensure that subscribers continue to lend in a responsible manner. It will also include a number of new provisions relating to the development of current accounts that give customers the opportunity to opt-out of entering an unarranged overdraft.

For credit cards, the new Code will include the industry's agreed commitments to give customers greater control over their cards. This includes paying off the most expensive debt on the card first; ensuring that interest rate changes are clearly communicated and that customers receive

appropriate information about the potential consequences of continuing to make only minimum repayments to their balance.

We are making the largest number of additions to the Lending Code to deal with appropriate treatment of customers in, or at risk of financial difficulty. This includes the extension of availability of the breathing space provision to customers using self-help or fee-based debt management tools; new Code provisions on appropriate use of Set Off and when consideration should be given to interest and charges concessions; extension of the Code's remit to include the CFS best practice creditor checklist and more comprehensive provisions on helping customers with a mental health condition to deal with their debts.

### **Responses to the Independent Reviewer's recommendations**

1. Below we explain the rationale for each of our decisions to accept or reject a recommendation and where appropriate, indicate the implementation period required to put any new measures into practice. For ease of reference, each of our responses includes a reference number [..] corresponding to the numbering used in the reviewer's report.

#### **General Issues**

2. The Code sponsors agree with the reviewer's introductory recommendation, that there should be two customer-facing documents – one for personal customers and one for micro-enterprise customers. These documents will be plain language certified, available in branch and online and provide to new customers from July 1<sup>st</sup> 2011.
3. There will be one industry-facing Code compliance document that will include provisions for both personal and micro-enterprise customers and it will include a glossary of terms. This will be available via the sponsors' and LSB websites and signposted in the customer-facing documents.

#### **Introduction**

4. The independent reviewer recommended that the introduction to the Code should include the following wording from the Banking Code [1]:

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

5. This text was not carried forward to the 2009 Lending Code because use of the term 'voluntary' had on occasion been misunderstood by readers to mean that subscribers to the Code could choose whether to follow the Code's provisions.
6. The sponsors believe the text, currently used in the Lending Code – *This is a self-regulatory Lending Code setting minimum standards of good practice...*- is less open to misunderstanding.
7. In response to the independent reviewer's recommendations [4], we agree to make reference to relevant legislative protections that customers enjoy within the customer-facing Code documents and the longer technical Code. We will also make reference within the technical Code to the availability of customer-facing documents.

#### **Section 1: Key commitments**

8. The independent reviewer recommended that Key Commitment 2 of the Code should reflect the following FSA TCF outcome [6]:

*Consumers are provided with clear information and are kept appropriately informed **before, during and after** the point of sale*

9. We agree with this recommendation and will amend Key Commitment 2 to include that customers should be given clear information before, during and after the point of sale.

## Section 2: Communications and financial promotions

10. We agree with the reviewer's recommendation to amend paragraph 16 of the Lending Code to include reference to, and ensure compliance with, the latest consumer credit advertisement regulations [10].
11. The independent reviewer recommended that the Code should retain a requirement to use the unsecured loan summary box in pre-sale communications [11]. However, as the reviewer noted, new consumer credit regulations, implementing the EU Consumer Credit Directive now require that a Standard European Consumer Credit Information (SECCI) document is provided to customers in good time before a credit agreement is made. This document outlines the key features of the loan in a standard format and therefore mirrors the aims of the summary box.
12. Whilst we recognise the benefits of the loan summary box we are keen to avoid unnecessary duplication of information to consumers. So, on the basis that all customers will be provided with a standard form key information document (SECCI) during the sales process, we will make provision of the loan summary box a voluntary initiative, with the proviso that where a subscriber chooses to use the summary box, they do so in compliance with the standard loan summary box format that will be maintained as an annex to the Code.
13. Additionally, the summary box template will be updated as necessary to reflect requirements of the latest consumer credit legislation, such as the introduction of a 'representative APR'.
14. The independent reviewer recommended that the Code include an example of the credit card summary box [11]. This summary box is one of a number of provisions within The UK Cards Association Best Practice Guidelines, which are currently referenced throughout the Lending Code. Compliance with these standards is similarly monitored and enforced by the LSB. As these guidelines are familiar to subscribers to the Lending Code we do not believe it is necessary to repeat them within the Code.
15. The independent reviewer makes reference within this section of his report to the BBA Statement of Principles for small businesses and its provision to new customers [12]. This document will be incorporated into the 2011 Lending Code, so that its provisions become requirements of the Code for micro-enterprises. The protections provided by the Statement of principles will be included in the customer-facing micro-enterprise Code document that will be given to new customers in branch and online.
16. The independent reviewer has recommended that the Lending Code require that customers be given the option to 'unsubscribe' from unsolicited marketing communications sent by e-mail [13]. We agree to add text to the Code to require that unsolicited marketing email includes a functionality allowing the customer to unsubscribe from future emails of a similar nature.

## Section 3: Credit reference agencies

17. The reviewer's report includes reference to work carried out in 2010 by the Treasury Committee and OFT to consider credit searches and their impact on customers shopping around for credit products [14].
18. The Code sponsors have worked with the OFT to consider how the industry can help consumers to better understand credit searches and to use quotation searches where these are available. In agreement with the OFT, from July 1<sup>st</sup> 2011, the new Lending Code will include a provision requiring that subscribers who offer an indicative quotation facility should make the availability of this facility clear to customers, so that they are empowered to request a quote and/or seek out a creditor who offers such a facility when shopping around for a product. We will also include a definition of *quotation search* within the glossary to the main Code document.
19. The independent reviewer has recommended that the Code be amended to clarify that the listed reasons that a lender might provide default information about a customer's account to a credit reference agency (CRA) are the only reasons that default information might be provided [15]. A further recommendation is that the first sentence of paragraph 36 of the Code be removed [16].

20. We cannot agree to these recommendations because the relevant paragraphs of the Code reflect the Information Commissioner's Office (ICO) technical guidance on the appropriate recording and use of defaults. It is important that the Code continues to correctly identify that default information about a customer's debts can where appropriate be provided to a CRA without the prior consent of the customer or notice being given.
21. As recommended by the reviewer, we agree to amend the Code reference to the ICO's guidance on the Data Protection Act 1998 [18] and we will also include contact details for each of the CRAs within the personal customer-facing Code document to meet the reviewer's aims of increasing consumers' awareness of their credit records [19].
22. It should also be noted that following implementation of the new consumer credit EU regulations on the 1<sup>st</sup> February, lenders are required to inform a customer of the details of the relevant CRAs if the customer's application for credit is declined due to the use of CRA data.

#### **Section 4: Credit Assessment**

23. The independent reviewer has recommended that the Lending Code provisions on credit assessment be amended to better align with the OFT Irresponsible Lending Guidance [22-24, 26]. This would represent a subtle, but important reinforcement of the Code's requirements, from assessment of a customer's ability to repay towards a fuller assessment of the affordability of the credit in a sustainable manner.
24. We agree with the reviewer's aims and will amend the Code to strengthen its requirements on factors that must be assessed in making a decision to lend. These amendments will not (as the reviewer recommended) be a copy-out of the OFT guidance, but will be focused on meeting the reviewer's aims with more regard to the products, sales channels and providers subject to the Code's provisions.
25. The reviewer's report recommends that the Code prohibit subscribers from including as a factor within a credit assessment the length of time a customer has held a current account with a provider and states that use of this factor could act as a deterrent to account switching [25].
26. Although the length of time a customer has held a current account with a bank is only one of many factors that are used within a credit assessment, it is regarded by lenders as a useful element in building a full picture of the customer and therefore being able to make a responsible lending decision. The sponsors are therefore not able to accept this recommendation.
27. The independent reviewer recommends that the industry's Guide to Credit Scoring be monitored and enforced by the Lending Standards Board [27]. The guide is a technical document aimed at developers and users of credit scoring systems and is concerned with the application of tools of a commercial nature. As such the Guide does not lend itself to the conduct of business approach that the Lending Standards Board has to monitoring compliance with the Lending Code. We do not therefore accept the independent reviewer's recommendation.
28. The reviewer recommends that section 4 of the Code include reference to the existing Code requirement to provide a customer with the main reason for a declined application if asked by the customer [28]. We agree and will amend the Code accordingly.
29. The reviewer's report makes reference to 6 commitments that were made in relation to small business lending, by the banking industry in June 2010 and recommends that they are incorporated into the Statement of Principles [29]. As outlined above, we will be incorporating the Statement of Principles' provisions into the Lending Code and we therefore agree to include these additional 6 commitments within the Code.

#### **Section 5: Current Account overdrafts**

30. The independent reviewer recommends that the heading of this section of the Code be changed to clarify that it applies to both arranged and unarranged overdrafts [30]. Rather than amending the section title, which we feel to be sufficient and encompassing, we will ensure that it is clear within this section, which form(s) of overdraft is being referred to for each requirement.

31. The reviewer recommends that the Code adopts the work carried out between the industry and OFT to devise new standards for accounts that offer customers the ability to opt out of having access to an unarranged overdraft facility. This work also included the development of new best practice standards for dealing with customers in financial difficulty, including as a result of unarranged overdraft charges [31]. We accept the reviewer's recommendation and will incorporate these new initiatives in the Code, with implementation required by July 1<sup>st</sup> 2011.
32. Additional work was undertaken during 2010 by a number of banks and the OFT to develop annual current account statements and additional information for inclusion on periodic current account statements. The reviewer suggests that these new obligations be adopted within the Lending Code [32]. As these obligations only apply to a limited number of current account providers and will in future be monitored by the OFT, we will not be accepting the reviewer's recommendation to require inclusion of these standards within the Lending Code.
33. The independent reviewer notes that paragraph 53 of the Code currently only requires that information about interest rates is provided to customers in pre-sale current account literature and recommends that charges information should also be included [33]. We accept the reviewer's recommendation and will correct this oversight in the 2011 Code.
34. The reviewer recommends that the Lending Code is amended to require that in all circumstances when a lending application is declined, the customer should be given the main reason for the decline, without having to ask [35]. However, the latest consumer credit legislation [*Consumer Credit (EU Directive) Regulations 2010*] requires that the customer be informed without asking if the reason for a decline relates to a search undertaken with a CRA. The customer is then given details of the CRA used. We believe this to be a more appropriate approach, as it raises awareness of the customers' ability to see (and correct if necessary) their credit report, whilst avoiding the risk of the lender having to provide potentially sensitive information to a customer that could be used in the future to game the system or commit credit fraud.
35. The independent reviewer recommends that section 5 of the Code make reference to Section 74 of the Consumer Credit Act 1974 regarding information to be provided to customers who enter a significant unarranged overdraft [36]. However, the introduction to the Code reminds subscribers of their obligations to comply with consumer credit legislation without duplicating the Act's provisions within the Code. We believe this to be more appropriate.
36. The Lending Code currently requires that customers are given at least 14 days pre-notification before interest is taken for the provision of an overdraft. The reviewer recommends that this Code provision should also apply to overdraft charges [37]. We agree that the reviewer's recommendation should apply to arranged and unarranged overdraft charges for personal customers and to arranged overdraft charges for micro-enterprises. We will therefore amend the Code to require that customers are given at least 14 days pre-notification before overdraft interest and charges are taken in these circumstances. Appropriate implementation periods will be agreed for those lenders not yet able to provide this prenotification.

#### **Section 6: Credit Cards**

37. The independent reviewer acknowledges a number of new best practice commitments for credit cards, made in response to a government review of the product [40-50, 52-54]. These commitments, with the exception of minimum repayments which are subject to a transitional period, were implemented in January 2011 and will be incorporated into the 2011 Code.
38. The reviewer recommends that where a subscriber notifies a customer that they intend to reduce their credit card limit, that notification should include an explicit provision for the customer to contact the bank if the reduction will cause them difficulties [51]. As a responsible lender, it will sometimes be incumbent on a card provider to reduce the level of credit available to a customer, but we agree that notifications of a credit limit reduction should include, or signpost to, relevant customer contact details, so that the customer can discuss with the lender any concerns they have about their card or their financial position. We will therefore amend the Code to include a provision requiring that contact details are always provided or signposted with a notification.

39. The independent reviewer recommends that the Code prohibit the unsolicited provision of credit card cheques [55]. The industry has already implemented a voluntary cessation on sending unsolicited credit card cheques to personal customers and this commitment will be reflected in the Code.
40. The Lending Standards Board is currently analysing the results of its recent thematic review of the treatment of unauthorised credit card transactions. As noted by the independent reviewer, the sponsors expect to work with the LSB to consider appropriate amendments to the Code where necessary on completion of this analysis [56].
41. The sponsors accept the reviewer's recommendation to clarify that the provisions in the Code on risk-based re-pricing apply to personal customers and can be extended to commercial cards at the issuer's discretion [58].
42. As per the reviewer's recommendation, we will amend section 6 of the Code to state that subscribers should, if asked by the customer, provide an explanation of the main reason why a credit card application was declined. This will clarify that this Code provision consistently applies to each product covered by the Lending Code [59].
43. The independent reviewer finds that credit card chargeback protections are not well known by customers and recommends that the Code should require subscribers to make customers aware of these protections within the consumer facing Code document [60]. We agree that these protections are not well known or understood, but do not believe it would be practical or appropriate (due to the complexity and number of provisions) to include these within the consumer document. We do however agree to include a requirement within the Code that, from July 1<sup>st</sup> 2011, customers should be made aware of the protections available to them if they contact their card provider in relation to a failed purchase to which the protections might apply.

#### **Section 7: Loans**

44. In accordance with the independent reviewer's recommendation, the new Code will state explicitly that if a subscriber wishes to refer a customer to another lender, following a declined application, then any referral should only be made with the customer's express consent [62].

#### **Section 9: Financial Difficulties**

45. The independent reviewer reports that many stakeholders believe that further clarification is needed of what sympathetic and positive behaviour constitutes for the treatment of customers in financial difficulties [66]. In line with the reviewer's recommendation, the Code sponsors and Lending Standards Board have agreed that the customer facing document will set out the support a customer can expect to receive and in addition, examples of good practice will be included in the LSB's publicly available bulletins and reports, so that subscribers and stakeholders have access to relevant examples of what the LSB finds to be appropriate behaviour in sympathetic and positive treatment of customers in financial difficulties.
46. Section 9 includes a bullet point list of events that might constitute evidence of financial difficulties. The reviewer requests that it is made clear that this list is illustrative and non-exhaustive and that a bullet is added to include the customer informing the bank that they are in or heading towards financial difficulty [67]. We are happy to amend the Code accordingly.
47. The independent reviewer states that in some circumstances subscribers' current obligations to be proactive in considering financial difficulties do not extend far enough and that action is not forthcoming until the customer is in default [68]. The sponsors believe that customers who seek assistance before they are in arrears should also be provided with appropriate assistance to manage their financial situation. We therefore agree to amend the Code to provide that where a customer makes a subscriber aware that they are heading towards financial difficulty, the subscriber should engage with the customer, including considering a repayment plan if it is provided by the customer or their advisor. This provision will not however prescribe that a particular outcome must be agreed following consideration of a customer's situation in these circumstances.

48. In line with another of the independent reviewer's recommendations [69], the new customer facing Code documents will provide examples of the considerations that a lender will make when a customer is in financial difficulties and include signposts to sources of free, independent information and advice for customers in financial difficulty.
49. With regard to repayment plans, the reviewer recommends that the Code should state that periodic review of the plan should not suggest that the customer increase their offer, unless the customer's financial situation has improved [71]. We accept this recommendation and will amend the Code accordingly.
50. The independent reviewer recommends that the Code should state that subscribers must ensure third party debt collection agencies employed on the subscriber's behalf follow the Code's standards [72]. We agree to amend the Code accordingly and to require that due diligence, periodic review and audit is used to ensure such compliance.
51. The independent reviewer recommends that subscribers to the Code are required to reduce or pay off all existing borrowing that it is aware is being consolidated, when agreeing to provide a customer in financial difficulties with a consolidation loan [74]. He further recommends that the monthly repayment for a consolidation loan should not exceed the monthly costs of the loans being consolidated [75].
52. Although the Code sponsors appreciate the aims of the reviewer in making these recommendations, we are unable to fully accept them. To make the provision of a consolidation loan conditional on the lender paying off other internal and external credit lines could have onerous implications on the lender in the way such a contract would have to be structured under consumer credit legislation. We therefore believe that it is more appropriate for lenders to reduce the customer's in-house borrowing where appropriate and to encourage the customer to reduce or pay off their other debts accordingly.
53. The sponsors agree that in all but exceptional circumstances it is right that the monthly cost of a consolidation loan should not exceed the cost of the loans being consolidated. However, this may not always be the case. For instance, if a loan (or loans) being consolidated is currently subject to a promotional or introductory rate then the consolidation loan may initially be more expensive. There may also be other circumstances where a customer in financial difficulties might benefit from a single consolidation loan, with a slightly higher monthly cost, than a number of different loans with different repayment arrangements.
54. The sponsors will therefore amend the new Code to state that the monthly cost of a consolidation loan should be less than the monthly costs of the loans being consolidated, unless there are exceptional circumstances where it is appropriate for that not to be the case. Subscribers will be required to implement this requirement for consolidation loans agreed from July 1<sup>st</sup> 2011 onwards.
55. Currently the Lending Code's Breathing Space provisions apply to customers who are using a not for profit debt advice agency. This condition was agreed between the industry and the government, when the breathing space was first introduced for credit card customers. It provides an incentive for customers to seek appropriate advice and lenders can be more confident that a repayment plan will be developed during the breathing space period.
56. In his report, the independent reviewer recommends that scope for the breathing space be extended to customers who are making a genuine attempt to develop a repayment plan, but are not necessarily using a not for profit advice agency [77]. The sponsors agree that customers who are seriously attempting to develop a repayment plan should be given the same forbearance as those using an advice agency, but we are mindful of the need for lenders to be sure that this provision is not abused by customers seeking only to avoid their obligations. We will therefore amend the Code to allow, from July 1<sup>st</sup> 2011, for the breathing space to be offered to customers using self-help or a fee-charging advisor, where the customer can demonstrate to the subscriber that they are making a genuine effort to develop a repayment plan.
57. The reviewer also recommends that the Code be explicit about what will and will not happen during the breathing space period [77]. We agree that further clarity is needed in this area and

will amend the Code to require that subscribers make the terms of the breathing space clear to customers and discuss with them the options available to deal with established account operations during the period of forbearance.

58. The breathing space provision currently allows in exceptional circumstances for an initial 30 day period to be extended by up to another 30 days, where development of a payment plan is progressing but is not yet concluded. The independent reviewer recommends that rather than extension under exceptional circumstances, the lender should grant an extension unless there is good reason not to [78].
59. The Code sponsors are sympathetic to the aims of this recommendation, but we are wary of the breathing space provision becoming a 60 day default period because of the potential implications for the customer and the lender of a two month period of account inactivity. We believe that compromise is possible to allow for an extended period where appropriate, without an expectation being built that one should always be forthcoming. We will therefore amend the Code to include provision for an extended period to be offered where there is clear evidence of genuine progress being made towards a realistic debt repayment plan.
60. The Code currently stipulates that subscribers should normally communicate with a customer in financial difficulties via their advisor when the customer requests so and appropriate authority is in place. However, the Code does allow the lender to communicate directly with the customer where necessary. The independent reviewer recommends amendment to the Code to remove the phrase 'normally' when referring to this action, preferring instead that lenders should always communicate with the customer through an advisor, whilst acknowledging that there will be exceptional occasions when the lender may need to contact the customer direct [79].
61. We will not be accepting the reviewer's recommendation to remove the phrase 'normally' from the relevant Code text because we believe that to do so could confuse readers, who still need to be aware that it is not always appropriate or possible for the lender to only communicate with a customer via their advisor. We will however make an addition to the Code to require that in those circumstances where it is necessary for the subscriber to contact the customer directly, that the subscriber explains to the customer why direct contact was necessary.
62. The independent reviewer refers to the use of asset sales and credit balances when considering the Code's requirements around debt recovery procedures [81]. The sponsors have considered each with the LSB and are comfortable that no additional Code guidance is currently necessary about the use of asset sales. With regard to credit balances, the sponsors and LSB have agreed that the LSB's guidance on appropriate use of the Right of Set Off should be fully incorporated into the Code as new requirements.
63. In his report, the independent reviewer recommends that current reference within the Code to the possibility that the subscriber may accept token offers, be replaced with a more explicit requirement that the subscriber should accept a token offer, when it is made by a customer who has no surplus income, but does have a realistic prospect of improved circumstances [83].
64. We accept the reviewer's recommendation and will amend the Code to clarify that from July 1<sup>st</sup> 2011 a token offer should be accepted if the customer does not have surplus income, but does have a realistic prospect of improved circumstances. We will also clarify that accepting a token offer will not represent an agreed repayment plan and will not prevent the lender from registering a default and/or pursuing recovery through normal procedures. We will also provide a definition of 'token offer' within the glossary to the Code.
65. The independent reviewer recommends that if a Common Financial Statement (CFS) is being used by an advisor to develop a repayment plan for a customer, then a proposal based on expenditure that falls within the CFS trigger figures should be automatically accepted [85]. The sponsors do not believe that the Code should prescribe automatic acceptance of a repayment plan because there may always be circumstances where factors other than those related to trigger figure expenditure might impact upon the feasibility of a plan.
66. However, we agree with the reviewer's aims in making this recommendation and are happy to amend the Code to stipulate that subscribers should only challenge expenditure that falls within

the CFS trigger figures when they have reasonable cause to believe that the customer's income and expenditure information is either incomplete or inaccurate.

67. The reviewer suggests that the phrase 'debt management plan' be amended to one of 'repayment arrangement' or 'repayment plan' within the Code sections on use of the CFS [86]. We believe that the current Code wording is well known and appropriate and will not be making this minor amendment.
68. The reviewer recommends that the Code encourage subscribers to consider a CFS if it is submitted by a customer who believes that they are heading into financial difficulties and would like to arrange a repayment plan before they enter arrears [87]. As outlined at paragraph 48, we are happy to amend the Code to clarify that a customer's representations, including presentation of a CFS, should be considered by the subscriber if the customer is seeking to work with them to manage impending financial difficulties.
69. The reviewer's report makes reference to the CFS best practice checklist, developed through the coordination of a number of creditor and advisor organisations, and recommends its incorporation into the Lending Code [88]. We agree with the independent reviewer's recommendation and will amend the new Code to require that subscribers comply with its terms from July 1<sup>st</sup> 2011.
70. The independent reviewer acknowledges that there are alternatives to the CFS in use by not for profit debt advisors, such as the Consumer Credit Counselling Service and that a standardised self help tool called CASHflow is also in increasing use. The reviewer thus recommends that the Code's standards apply to these tools as they do to the CFS [90-91]. We agree that the Code should accommodate all appropriate debt management tools and will amend the Code to clarify that its standards will apply to debt repayment tools and models that are endorsed by the Code sponsors and LSB from time to time. This will begin with recognition of the CCCS Budget Guidelines and the CASHflow tool from July 1<sup>st</sup> onwards. We will also require that repayment plans submitted by customers using self-help tools are given equal consideration by Code subscribers as any presented through an advisor.
71. The independent reviewer recommends that the Code section on debt and mental health be amended to require that subscribers' internal policies include clear statements of how they will respond to customers in debt with mental health difficulties. He further recommends that subscribers provide appropriate training to mainstream and specialist staff [92].
72. We agree with the independent reviewer's aims and will amend the Code to clarify that subscribers must ensure that their processes and systems are responsive to the needs of customers in financial difficulties who the subscriber knows to have a mental health condition. As the Code includes provisions on appropriate treatment for customers in financial difficulty that have a mental health condition and it is a requirement of subscription to the Code that lenders train their staff in Code compliance, we believe that the reviewer's aim is met without amendment to the Code with regard to training.
73. The reviewer recommends the addition of three further bullets to the list within the Code giving examples of some of the responses that a subscriber might make to a customer in financial difficulties who has a mental health condition. These are: asking customers how their mental health problem impacts on their ability to repay their debt; suggesting the customer obtain support from a family member or carer; signposting to a free, independent money advice agency [93]. We agree with the reviewer's recommendation and will amend the Code accordingly.
74. With regard to customers in financial difficulties who have a mental health condition, the reviewer recommends that if a third party is assisting the customer, then the subscriber should suspend contact with the customer as soon as possible [94]. We agree that this is appropriate and believe that it is already required by the Code, where legislative obligations allow, with regard to all customers in financial difficulty that have provided authority for an advisor to act on their behalf.
75. The reviewer also states that the Code should require subscribers to accept oral notification from a customer that they have a mental health condition and are in receipt of appropriate money advice as sufficient for the suspension of calls and letters to the customer [94]. We believe that

the Code's breathing space provision already applies in these circumstances and subscribers should be willing to suspend collections calls and letters when they are contacted by the customer or their advisor with details of the help that is being sought or provided to develop a repayment plan.

76. The Lending Code currently includes provision for subscribers to record relevant information about a customer's mental health, where the customer provides consent and information is treated in compliance with data protection requirements, to help staff to treat the customer appropriately. The reviewer recommends that the Code clarifies that the customer be informed about how such information will be used and we are happy to accept this recommendation and will amend the Code accordingly [95].
77. The independent reviewer recommends that subscribers should be encouraged to establish specialist teams (or staff) to deal with vulnerable customers and that such customers should be referred to these teams (or staff) as appropriate [96]. We agree with the reviewer's recommendation and will amend the existing Code paragraph on *specialist assistance* to encourage subscribers, who do not already have staff trained to deal with vulnerable customers, to do so.
78. At present the Code encourages subscribers to consider the Debt and Mental Health Evidence Form (DMHEF) if it is submitted by a customer. The independent reviewer recommends that the Code should require subscribers to consider the DMHEF [98]. We accept the reviewer's recommendation and will amend the Code accordingly.
79. The independent reviewer recommends that if a subscriber passes or sells a customer's debt to a collections agency, the subscriber should inform the customer of the subscriber's intention prior to moving the debt [99]. We accept the reviewer's recommendation, but believe it should apply to all customers. We will therefore amend the Code to require that customers are always pre-notified of where the debt is being passed to.
80. The independent reviewer recommends that the Money Advice Liaison Group (MALG) Guidelines on debt and mental health should be incorporated into the Code and monitored by the LSB [100]. The sponsors are unable to accept this recommendation because ownership of the content of the MALG Guidelines is beyond the control of the Code sponsors or LSB. However, we believe all the relevant creditor-based Guidelines are already incorporated into the Code and we will review any future changes to the Guidelines for incorporation into the Code, as and when appropriate.
81. As recommended by the reviewer, the sponsors agree to incorporate all of the LSB's guidance on interest and charges concessions into the 2011 Code [102]. We also agree to amend the Code to require that all enforcement action undertaken by a subscriber or a third party on the subscriber's behalf is applicable to the legal jurisdiction that applies to the customer [103].
82. The reviewer recommends that a new provision is added to the Code to prohibit subscribers from initiating court proceedings in relation to a debt, if the credit product is already subject to a complaint by the customer to the Financial Ombudsman Service (FOS) [103]. The Code sponsors agree with the reviewer's aims and we do not believe that where a valid complaint is already being considered by the FOS the subscriber should initiate any new court action to recover the debt.
83. However, we are mindful of the potential for a new provision in the Code to be mis-used by some customers and/or their advisors to avoid legitimate court proceedings being undertaken. This could result in frivolous complaints being lodged with the Ombudsman to the detriment of genuine complainants. We are therefore unable to accept a recommendation for a new Code requirement, but have reminded subscribers of their obligations to treat customers fairly when taking formal recovery procedures.
84. As recommended by the independent reviewer, the new customer facing Code documents will provide contact details for the FOS and alert customers to their rights to make a formal complaint [105].

85. The reviewer makes three recommendations concerning the activities of the LSB. These are that the LSB should make its guidance to subscribers on compliance matters publicly available; that the LSB's periodic publications should include case studies of good and bad practice and that the customer facing Code documents should signpost customers to the LSB website [106]. The sponsors have liaised with the LSB to consider these recommendations and it is happy to accept and initiate each.