Independent Review of the Lending Code 2010/
Professor Lorne D Crerar/
November 2010/
Contacts/

Professor Lorne D Crerar
Chairman
Harper Macleod LLP

t/ 0141 227 9300
f/ 0141 229 7300
e/ lorne.crerar@harpermacleod.co.uk

The Ca’d’oro
45 Gordon Street
Glasgow
G1 3PE
t/ 0141 221 8888
f/ 0141 226 4198

8 Melville Street
Edinburgh
EH3 7PS
t/ 0131 247 2500
f/ 0131 247 2501

Alder House
Cradlehall Business Park
Inverness
IV2 5GH
t/ 01463 798 777
f/ 01463 798 787

14-18 Cadogan Street
Glasgow
G2 6QN
t/ 0845 878 4504
f/ 0141 308 4347

e/ info@harpermacleod.co.uk
www.harpermacleod.co.uk
<table>
<thead>
<tr>
<th>Contents/</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>BACKGROUND TO THE LENDING CODE</td>
<td>1</td>
</tr>
<tr>
<td>OUTLINE OF APPOINTMENT</td>
<td>2</td>
</tr>
<tr>
<td>CONSULTATION</td>
<td>3</td>
</tr>
<tr>
<td>MOVEMENT IN THE INDUSTRY</td>
<td>4</td>
</tr>
<tr>
<td>IMPORTANT MATTER ALREADY ACCEPTED BY THE LENDING STANDARDS BOARD AND CODE SPONSORS</td>
<td>6</td>
</tr>
<tr>
<td>REVIEW OF THE LENDING CODE</td>
<td>7</td>
</tr>
<tr>
<td>THE CODE</td>
<td>8</td>
</tr>
<tr>
<td>SECTION 1: KEY COMMITMENTS</td>
<td>10</td>
</tr>
<tr>
<td>SECTION 2: COMMUNICATIONS AND FINANCIAL PROMOTIONS</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 3: CREDIT REFERENCE AGENCIES</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 4: CREDIT ASSESSMENT</td>
<td>15</td>
</tr>
<tr>
<td>SECTION 5: CURRENT ACCOUNT OVERDRAFTS</td>
<td>19</td>
</tr>
<tr>
<td>SECTION 6: CREDIT CARDS</td>
<td>23</td>
</tr>
<tr>
<td>SECTION 7: LOANS</td>
<td>31</td>
</tr>
<tr>
<td>SECTION 8: TERMS AND CONDITIONS</td>
<td>32</td>
</tr>
</tbody>
</table>
The Lending Code 2009 (see Appendix 1) replaced the Banking Codes on 2nd November 2009 following the transfer of responsibilities for the conduct of business regulation for deposit and payment products to the FSA.

It is a voluntary code which sets standards of good lending practice for financial institutions to follow when they are dealing with consumers; micro-enterprises (with fewer than 10 employees and annual turnover that does not exceed €2 million); and charities with income of less than £1 million. The Code provides valuable protection for customers and explains how firms are expected to deal with them day-to-day and in times of financial difficulties. The Code covers current account overdrafts; loans; credit cards; and lending to micro-enterprises and charities. The Lending Standards Board monitor and enforce compliance with the Code which is sponsored by the British Bankers' Association; the Building Societies Association; and The UK Cards Association.

This is the first full independent review of the Lending Code (November 2009 issue).
I was appointed as Independent Reviewer of the Lending Code on 18 June 2010. My role is to invite views from stakeholders on changes that may be appropriate to ensure the Code remains fit for purpose. I am also required to assess the costs and benefits of potential changes and to make recommendations to the Lending Standards Board for subsequent discussion with the Sponsors as owners of the Code. My suggested changes are a combination of new additions, amendments to existing provisions and deletions. A summary of the main recommendations is available in Appendix 2.

There are two main constraints on my review. Firstly, on competition grounds, I cannot make recommendations which would restrict the ability of individual firms to set their own prices or which would otherwise restrict competition. Secondly, I have to weigh up the costs and benefits of each change.

The implementation date for the new Code is 31 March 2011.
The invitation to submit views on the current Code was issued on 21 June 2010 with a deadline to respond of 10 September 2010. I received 33 Submissions from a variety of sectors within the industry.

// Lending Standards Board Independent Directors
// Sponsors
// Government Departments
// Regulators
// Subscribers
// Advice Bodies
// Consumer Bodies
// Trade Associations
// Credit Reference Agencies
// Others

In addition to the written Submissions, a number of round table discussions were held to elaborate on the responses and to draw out any issues. These meetings were held throughout September and October.

This is an independent review, however input has been received in particular from the LSB, BBA and the Sponsors’ Banking Code Advisory Panel (“BCAP”) in relation to matters of cost and enforceability.
The financial sector has been subject to extensive pressure in recent years, with the industry as a whole being required to make substantial changes to the way they practice their business.

Over the last 10 months the Lending Standards Board has worked in conjunction with the Sponsors, subscribers and other stakeholders to agree various sets of guidelines in response to consultations and reviews. These guidelines are aimed at providing a clear process for how the industry deals with specific areas, including Unarranged Overdrafts; Use of the Right of Set Off; and Interest and Charges Concessions.

In addition, the Government has reached a Joint Commitment with credit card companies for new rights for credit and store card users and the BBA have compiled 6 new Commitments for lending to small and medium sized enterprises (SMEs).

All of the above Commitments and Guidance will be recommended for inclusion within the new Code and will be addressed in the relevant sections within which they fall.

In March 2010, the OFT issued their ‘Irresponsible Lending Guidance’, which was updated in August 2010. This sets out standards the OFT expect from businesses engaged in lending and covers the entire lending process from the initial decision to the handling of arrears and defaults. Where relevant, the current guidance will be referred to in my report.

The 2008 Consumer Credit Directive was adopted on 23 April 2008 and has been implemented by the UK in 2010 through six sets of Regulations. The implementing Regulations apply to all consumer credit agreements regulated under the Consumer Credit Act 1974 (other than agreements secured on land).

The Regulations implementing the Directive are:

/ The Consumer Credit (Total Charge for Credit) Regulations 2010, SI 2010/1011 (the TCC Regulations)
/ The Consumer Credit (Agreements) Regulations 2010, SI 2010/1014 (the Agreements Regulations)
/ The Consumer Credit (Amendment) Regulations 2010, SI 2010/1969 (the Amendment Regulations)

The Regulations insert new provisions into the 1974 Act and will come into force on 1 February 2011, although firms can comply earlier if they choose (other than in respect of advertising).
The LSB and Sponsors will be required to ensure there is no conflict between the Code and the Regulations. The relevant statutory provisions will be referred to in my report where their impact is applicable.
Important matter already accepted by the Lending Standards Board and Code Sponsors

Consumer Facing Documents

The current Lending Code is a subscriber facing document for the industry. Written Submissions and feedback at the oral presentations were demonstrative that something had been lost from the Banking Code era in respect of visibility and impact of the Code for personal and micro-enterprise customers. The weight of the evidence was very powerful and I would therefore have been suggesting the creation of consumer facing documents for both personal and micro-enterprise customers to provide a plain language insight into the intentions and implications of the Code for them.

During the consultation stage, I have been advised by the BBA and LSB that industry agreement has been made to produce two Consumer Facing Documents, one for personal customers and the other for micro-enterprises. Both versions should be available in hard copy and in a PDF version online for customers. It is my understanding that the LSB, in conjunction with the BBA, will draft these documents based upon the intentions already referenced.

The Submissions have suggested that the Consumer Facing Documents should outline the “customer’s obligations”. The Lending Code is a voluntary code entered into by lenders, the Code does not impose obligations on the customer and therefore I do not support this suggestion.

The previous Banking Code contained a provision that: “All financial institutions that follow this Code will make copies of it available to all their personal customers and have notices in their branches and on their websites explaining that copies of the Codes are available and how you can get one”. I recommend a similar provision should be added to the Lending Code to reflect the new Consumer Facing Documents that will be available. In my view, this is best placed in the ‘Introduction’.

In addition to the Consumer Facing Documents relative to the Lending Code, the BBA has committed to compiling a Statement of Lending Principles for enterprises with a turnover of between €2 million and €50 million as detailed in the Report of the Business Finance Taskforce. Responsibility for the creation and issuing of this document will rest entirely with the BBA. This commitment is outwith the scope of the Lending Code and this review, however it is important to note this additional, complementary work being carried out.
Review of the Lending Code

General Issues

One Industry Facing Document

Discussion has been ongoing in the industry as to the possibility of having two separate Lending Codes for subscribers. As with the Consumer Facing Documents, one would be specific for the obligations in relation to personal customers and the other would be concerned with the treatment of micro-enterprises. I understand agreement has now been made that there will be one Lending Code for subscribers that will address both personal and micro-enterprise customers in the same way as the previous Lending Code.

In my opinion, it would be appropriate to re-name the industry facing document as the “The Lending Code and Guidance for Subscribers” so as to distinguish it from the Consumer Facing Documents for personal customers and micro-enterprises.

Glossary

I recommend that a Glossary of Terms, alike to that contained in the former Banking Code (see Appendix 3), should be incorporated to provide expansive definition of the technical terms and references contained within the Lending Code.

The Banking Code provided that: “Throughout this Code, words in the text which are shown in bold print are defined in the Glossary at the end of the Code”. I recommend similar wording is incorporated into the Lending Code.

Plain Language

A number of Submissions were received and oral evidence put forward that letters to customers were overly technical and confusing. I recommend that Section 2 (Communications and financial promotions) includes a requirement that all correspondence from subscribers to customers should be in plain language to enable better understanding of important communications. A particular area of concern was in relation to correspondence sent when a customer was in default.

I recognise there will be occasions where technical language is required, for example, where Regulations and the law prescribe specific forms of wording.
Introduction

1 Paragraph 1 of the Code currently states: *This is a self-regulatory Lending Code setting minimum standards of good practice when dealing with the following customers in the UK…*

I recommend the following wording from the Banking Code should be incorporated into Paragraph 1: “As a voluntary code, it allows competition and market forces to work to encourage higher standards for the benefit of customers.” This terminology should also be incorporated into the Consumer Facing Documents.

2 Paragraph 2 provides that:

*The Lending Code covers good practice in relation to:*

/ Loans; 
/ Credit cards; 
/ Charge cards; and 
/ Current account overdrafts 

*It does not apply to merchant services, non-business borrowing secured on land, or to sales finance.*

Submissions have sought for the Code standards to be extended to include store cards, asset-based finance, merchant services and sales finance. The scope of the Code is outwith my remit and therefore I will not be making any recommendations on this matter.

3 Paragraph 5: *This Code has not been reviewed by the FSA and the FSA will not have regard to this Code when exercising its regulatory functions.*

Reference has been made in the Submissions calling for the FSA to endorse the Code, however I would suggest this is outwith the scope of this review and therefore I will not comment further.

4 Paragraph 6: *This Code sets standards of good lending practice but subscribers must – at all times – ensure they are compliant with the Consumer Credit Acts and associated Regulations as well as other relevant legislation (such as the Payment Service Regulations (PSRs) and, for consumers, the Consumer Protection from Unfair Trading Regulations).*

I recommend this Paragraph is amended to make reference to the 2010 Regulations implementing the Consumer Credit Directive.
The Equality Act came into force in October 2010 with the aim of promoting fairness and equality of opportunity and to tackle disadvantage and discrimination. The Act replaces the existing discrimination legislation for example the Race Relations Act 1976 and the Disability Discrimination Act 1995. It provides a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all. In my view, Paragraph 6 should be amended to also refer to the Equality Act 2010.

As recommended above, the paragraph from the Banking Code referring to the Consumer Facing Documents should be inserted in the Introduction.
Section 1: Key commitments

6 Outcome 3 of the FSA ‘Treating Customers Fairly Initiative’ states: “Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale”.

I recommend wording should be added to Key Commitment 2 which currently provides: “Customers will be given clear information about accounts and services, how they work, their terms and conditions and the interest rates that apply to them” to give effect to this Outcome.

7 Key Commitment 5: Subscribers will deal quickly and sympathetically with things that go wrong and act sympathetically and positively when considering a customer’s financial difficulties.

In reviewing this section, I have given consideration to the suggestions for defining “sympathetically and positively” and providing examples of behaviours customers should expect. While this aspect is important and should be expanded upon, I believe it is best placed elsewhere within the Code, namely Section 9 on financial difficulties and the Consumer Facing documents. I recommend the Key Commitment on “sympathetically and positively” does not require amendment in this section.

8 Another aspect for consideration was whether there should be a Key Commitment not to disadvantage customers using self-help methods. In my view, this is an important factor but is specific to those in financial difficulties and it is therefore appropriate to address the matter in section 9 (Financial difficulties) rather than in this section. It will not be recommended as a Key Commitment.

9 A number of written representations were made in relation to aspects of the Key Commitments and these will be dealt with substantially in the relevant sections that follow.
Section 2: Communications and financial promotions

Paragraph 16: Subscribers should ensure that financial promotions are compliant with relevant advertising legislation and industry codes of practice, such as the Consumer Credit (Advertisements) Regulations 2004 and the Committee of Advertising Practice Codes.

I recommend this Paragraph is amended to make reference to, and ensure compliance with, the 2010 Regulations implementing the Consumer Credit Directive.

Paragraph 19: For some unsecured personal loans, key product information within financial promotions and pre-sale information should be available in a standard summary box. Details of which promotions and communications are covered and the format of the summary box are included in Annex A.

The industry are currently working to determine whether the Code Summary Box is capable of co-existing and is still appropriate with the introduction of the Standard European Consumer Credit Information (SECCI) under the Consumer Credit Directive.

In my view, the Summary Box referred to in Paragraph 19 and provided for in Annex A should remain in spite of the 2010 Regulations providing for the SECCI. This is supported by both the written Submissions and oral views expressed in meetings with the stakeholders. The Code Summary Box provides for clear and visible information to customers and can enhance their ability to compare products. In my view, maintaining this requirement will continue to serve customers well.

I further recommend that Paragraph 19 and Annex A should also include an example of a Summary Box for credit cards as referred to in Paragraph 67.

I gave consideration to extending the use of the Summary Box example to current account overdrafts in conjunction with section 5, however as there is an overlap between the FSA governance of current accounts and the Lending Code’s scope in relation to overdrafts this would not be an appropriate addition to the Code.

Paragraph 21: Micro-enterprise customers should be given a copy of the BBA Statement of Principles when they become a customer and at any time they request a copy.

Consideration should be given to including within this Paragraph an obligation to also provide micro-enterprise customers with the relevant Consumer Facing Document.

Paragraph 26: Customers must be given the opportunity to opt out of receiving the subscriber’s marketing information. They should be reminded of this option at least once every three years.

It has been suggested in the Submissions that the reminder should be reduced to one year, however I recommend that the current term is sufficient. The cost to benefit evaluation and
feedback from the industry is that more frequently than three years would be too onerous and is unnecessary.

I propose however, that where an option to opt out can be provided this should be done on every occasion, for example a link to unsubscribe at the end of an email. In adopting this, consideration will also need to be given to the terms of Paragraphs 32 and 33 of the Code.
The Treasury Committee carried out a consultation on credit searches in 2009 and following this the BBA, FLA and The UK Cards Association agreed with the OFT to develop further guidance on quotation searches. The Submissions have also called for explicit reference in the Code of the customer’s ability to make “quotation searches” without a mark being left on their credit record.

Quotation searches provide the lender with all the information it needs to price a product for the consumer, but no mark is visible on the file for other lenders to see that the search has been undertaken. This allows consumers to compare prices without multiple searches appearing to other lenders. Quotation searches only facilitate the provision of information on interest rates, rather than whether a consumer will be accepted for a particular product.

I agree that the Code should make reference to the use of quotation searches and recommend the LSB and Sponsors agree the appropriate wording.

Furthermore, I recommend that an explanation of quotation searches is provided in the Glossary and the Consumer Facing Document for personal customers.

Paragraph 35 currently provides:

Subscribers can give CRAs default information about a customer’s debts if:

/ The customer has fallen behind with their payments;
/ The amount owed is not being disputed by the customer; and
/ The customer has not made a proposal that satisfies the subscriber for repaying the debt following the subscriber’s formal demand.

I recommend that this Paragraph is amended to clarify that: “Subscribers can give CRAs default information about a customer’s debts only if”.

Following on from this I recommend removal of the first sentence of Paragraph 36 which states: Whether or not notice was given by the subscriber and consent was obtained from the customer at the time the account was opened, disclosure of default information can be made.

Paragraph 37 elaborates on a customer dispute: For the purposes of the second bullet point in Paragraph 35, a customer dispute is relevant if it refers to the amount of money owed by the customer and is genuine, reasonable and unresolved.

The Submissions have called for further detail on “genuine, reasonable and resolved”. I believe the wording of Paragraph 37 is sufficient, in my view the behaviours are self explanatory and further definition would likely confuse rather than clarify.
Paragraph 41: See also the Information Commissioner’s Guidance on the Data Protection Act 1998 which requires, in the absence of consent, one of eleven other conditions to be met. The ‘permission’ can be covered in a number of ways, for example, in terms and conditions, in an account opening pack, or it can be obtained at the time the disclosure is made. (Useful information can be found at www.ico.gov.uk).

I recommend a rewording of Paragraph 41 to provide a general reference to the Information Commissioner’s Guidance on the Data Protection Act 1998 with removal of the mention of the “eleven conditions”.

Paragraph 42: If a customer asks, subscribers should tell them how to get a copy of the information that CRAs hold about them, or should give the customer one of their leaflets that explain how credit referencing works.

I recommend removal of “if a customer asks” and expand the provision to provide the stages at which the information should be provided to customers. For example, when an initial credit assessment is being made or where an application for credit has been declined based on credit score information.

The Information Commissioner’s Office has compiled a consumer document titled “Credit Explained”. Consideration should be given to providing a reference to this in the Consumer Facing Document for personal customers.

A number of Submissions made reference to the requirement on subscribers to ensure credit reference files are up to date and accurate. Although there is strength in the arguments this is outwith the scope of the Lending Code and is a matter for Data Protection legislation.
Section 4: Credit assessment

22 There has been much debate in stakeholder consultations and meetings as to whether incorporation of the “Assessment of Affordability” contained in the OFT Irresponsible Lending Guidance would be appropriate. The OFT are looking for credit assessment to be more consumer-focussed and on balance I agree that this is the correct approach to matters of credit. By providing more explicit guidance in this section, the Code can enforce a transparent approach to lending by subscribers. It is also important to ensure the Code does not conflict with the assessment of creditworthiness provided in section 55B of the Consumer Credit Act 1974.

Paragraph 43, as it currently stands, centres around the customer’s “ability to repay”: Before lending any money; granting or increasing an overdraft, or other borrowing, subscribers should assess whether the customer will be able to repay it.

In my view, and in conjunction with the OFT Irresponsible Lending Guidance, this section should be amended to make an assessment of whether the borrower can afford to repay the credit in a “sustainable manner”.

The Code should clearly define “in a sustainable manner” in line with the OFT guidance:

“The OFT regards ‘in a sustainable manner’ in this context as meaning credit that can be repaid by the borrower:

/ Without undue difficulty – in particular without incurring or increasing problem indebtedness
/ Over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time
/ Out of income and/or available savings, without having to realise security or assets.”

23 It naturally follows that in making an assessment of affordability, Paragraph 44 will require to be amended in accordance with the factors laid out in 4.10 of the Guidance, namely:

“As previously stated, in the OFT’s view, the extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon, and proportionate to, a number of factors - which may include some or all of the following as appropriate:

/ The type of credit product
/ The amount of credit to be provided and the associated cost and risk to the borrower
/ The borrower's financial situation at the time the credit is sought
/ The borrower's credit history including any indications of the borrower experiencing - or having experienced - financial difficulty. A creditor may have an existing financial relationship with the borrower that could help to inform this aspect of the assessment. For example, it may have a long-standing financial relationship with the borrower that has been satisfactorily discharged on both sides.
The borrower’s existing and future financial commitments including any repayments due in respect of other financial products and significant non-credit commitments. We would only expect a creditor to take account of ‘future financial commitments’ of which it is aware. However, we would expect it to take reasonable steps to obtain relevant information. We do not consider that the creditor could be held culpable under circumstances in which it made a reasonable request for information from the borrower, in order to inform its assessment of affordability, and the information provided by the borrower was substantively incorrect/untrue and the creditor (acting reasonably) was not aware of this. ‘Significant non-credit commitments’ would include, for example, payments relating to rent, council tax, utility bills and hire etc.

The impact of a future change in the borrower’s personal circumstances: for example, this could include a known end date of current employment due to circumstances such as retirement or the end of a fixed term employment contract - either of which may lead to a fall in the borrower's disposable income. The possibility of being made redundant, when it was not known at the time that the assessment of affordability was undertaken that this would happen, would not be a matter that the OFT considers creditors could be reasonably expected to take into account.

The vulnerability of the borrower: for example, whether the borrower is known to lack - or is reasonably believed to lack - the mental capacity to be able to understand information and explanations provided to him and make informed borrowing decisions based on his understanding of such information and explanations at the time they are provided. Amongst those groups who may lack mental capacity to an extent that it might impact on their ability, at certain times, to understand information and explanations relating to financial products and/or effectively communicate any concerns they may have regarding such products, are those with specific mental health issues, those with learning disabilities and those with autism spectrum disorder (ASD).”

Paragraph 45: Assessment may also include other checks that have not been listed above.

I recommend that this paragraph should remain and be supplemented as per OFT 4.11:

“It would be disproportionate to require creditors to consider all of the above factors in all cases. The creditor should take a view on what is appropriate in any particular circumstance dependent on, for example, the type and amount of the credit being sought and the potential risks to the borrower”. 
Written Submissions and oral feedback at the meetings have suggested that subscribers should not use the length of time a current account is held with a specific bank as a factor when making a credit assessment. There is concern that this practice contributes to consumers’ lack of willingness to switch current accounts and I agree that this is a limitation to competition. I recommend that a new paragraph is inserted into the Code to address this matter.

I recommend the following text from Paragraph 4.12 of the Irresponsible Lending Guidance is incorporated into the Consumer Facing Document for personal customers:

“Creditors may employ the use of a variety of types and sources of information to assess affordability which might, depending on the circumstances, include some or all of the following examples (this is a non-exhaustive list):

- Record of previous dealings with the borrower
- Evidence of income (both actual current and reasonable expected future income)
- Evidence of expenditure
- A credit score
- A credit report from a credit reference agency
- Information obtained from the borrower, whether on an application form or separately (this would include information derived from ‘personal contact’ with the borrower – for example, during a meeting with a potential borrower at his home).

Paragraph 4.12 is not a checklist of sources of information that we consider creditors must use – but a list of examples of the types and sources of information that might be appropriate. In our view, creditors may apply their own discretion (acting reasonably) in deciding the types and sources of information they employ to assess affordability”.

Paragraph 48: Subscribers should ensure they are familiar with the requirements of the Code Sponsors’ Guide to Credit Scoring and the explanations that need to be given to customers if credit scoring is used, and also the Information Commissioner’s Guidance on Credit Referencing.

The Guide to Credit Scoring is issued by the Code Sponsors, therefore I recommend it is reasonable for compliance to be monitored and enforced by the LSB and the paragraph should be updated accordingly. The Paragraph should also be amended to remove reference to the Information Commissioner’s Guidance on Credit Referencing as this is no longer available.
I recommend the addition of a paragraph in Section 4 relating to subscribers declining a credit application and in particular the requirement to provide the main reason. Although subsequent sections on Current account overdrafts and Loans provide this, it would be useful to provide in the Credit assessment section the expectation on subscribers.

On 22 June 2010, the BBA announced 6 binding commitments from Banks to Small and Medium Sized Enterprises (SMEs). They provide that:

- SMEs can bring their professional advisers with them to support them in their discussions with their business manager
- Banks will use in-house guide or industry-standard literature to provide guidance on the factors that determine pricing
- Banks will always inform customers of the time it will take for a lending decision to be taken
- Banks will ensure they have fair and effective processes in place to review decisions to decline a lending request
- Banks will provide proactive and clear feedback to SMEs when a borrowing request is declined
- Banks will work with SME representatives and with the Lending Standards Board to promote the commitments and the Lending Code

The above commitments will be incorporated into the Statement of Principles for Micro-enterprises which currently sit in Annex B of the Lending Code.

Paragraph 50 also provides: Subscribers should also ensure that they follow the BBA Statement of Principles which sets out how banks should work together with micro-enterprises. The Statement is included as Annex B.

I recommend consideration should be given to updating Paragraph 50 to make explicit reference to the BBA Commitments.
Section 5: Current account overdrafts

30 Section 5 of the Lending Code relates to Current account overdrafts, however there is currently no reference to Unarranged Overdrafts. I recommend that the heading of Section 5 is updated as follows:

“Section 5 Current account overdrafts – arranged and unarranged”

31 In March 2010, the OFT published “Personal Current Accounts in the UK - Unarranged Overdrafts”. This report detailed the outcome of discussions held with personal current account providers to address concerns relating to unarranged overdrafts.

Resulting from these discussions, the Lending Standards Board, in conjunction with the OFT, have carried out work to develop minimum standards for the offering and operation of accounts that offer ability to opt out of an unarranged overdraft facility. They have also developed best practice guidelines for personal current account providers in dealing with customers in (or at risk of being in) financial difficulty who incur unarranged overdraft charges.

The Standards have now been agreed with the industry and I therefore recommend that these are fully incorporated into the Lending Code in section 5. The Lending Standards Board should work with the Code Sponsors to finalise the wording.

It has been suggested that an unarranged overdraft facility should be available on an “opt-in” as opposed to “opt-out” basis and that it should be compulsory for all accounts. I will not be recommending that this is considered for inclusion. Extensive work has already been carried out by the LSB and switching to an “opt-in” would, in my opinion, not improve the standards that have been compiled.

I understand an issue has been raised around the transparency of buffer zones and this is currently being considered by the LSB and Sponsors.

32 Paragraph 4.9 of The OFT report on Personal Current Accounts also provides:

“The OFT has worked with PCA providers and others to develop initiatives to improve the ability of all consumers to assess the costs and benefits of their PCA. To improve transparency, so that customers can more easily understand the costs of their accounts and compare them with others, PCA providers agreed that they will:

/ introduce an annual summary of the cost of their account for each customer;
/ make charges prominent on monthly statements, so that customers are more aware of the charges that they pay;
/ provide average credit and debit balances, which will help customers to estimate the potential benefits of switching bank; and
/ produce illustrative scenarios showing charges giving customers an idea of the costs for different patterns of use”.
I recommend the Lending Code is updated to incorporate these obligations upon subscribers in so far as they relate to accounts with overdrafts.

Pre-sale Information

Paragraph 53 currently relates to interest rate information: The customer must be provided, where relevant with details of the interest rate to be applied or, if reference interest rates are to be used, the method for calculating the actual interest and the relevant date and index or base for determining such reference interest rates.

I recommend this Paragraph should be amended to require that information about charges as well as interest is provided to customers. In my opinion this is an omission in drafting the existing provisions.

There is now also a requirement to provide this information under section 74A of the Consumer Credit Act 1974 both at the time the agreement is made and annually, therefore section 5 will require reviewing to ensure it complies with the statutory provision:

"74A.- Information to be provided on a current account agreement

(1) This section applies to a current account agreement where there is the possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit.

(2) The current account agreement must include the following information at the time it is made -

(a) the rate of interest charged on the amount by which an account-holder overdraws on the current account or exceeds the pre-arranged overdraft limit,
(b) any conditions applicable to that rate,
(c) any reference rate on which that rate is based,
(d) information on any changes to the rate of interest (including the periods that the rate applies and any conditions or procedure applicable to changing that rate), and
(e) any other charges payable by the debtor under the agreement (and the conditions under which those charges may be varied).

(3) The account-holder must be informed at least annually of the information in subsection (2)…"

Paragraph 54: This information must be provided either in good time, before the customer is bound by the contract; where the contract concludes at the payment service user’s request, using a means of distance communication, immediately after the conclusion of the contract.

This paragraph needs to be reviewed to ensure it is compliant with the Consumer Credit Directive requirements.
Point of Sale and Post-sale Information

35 Paragraph 56: If a customer's overdraft application is declined, the subscriber should explain the main reason why if asked by the customer. This could be provided in writing or electronically, if requested.

When a credit application is declined, the subscriber should provide the customer with the main reason for the application being declined without being asked by the customer. I recommend Paragraph 56 should be amended accordingly by removing “…if asked by the customer”.

36 Section 74B of the Consumer Credit Act 1974 states:

“74B - Information to be provided on significant overdrawing without prior arrangement

(1) Where -
(a) the holder of a current account overdraws on the account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, for a period exceeding one month,
(b) the amount of that overdraft or excess is significant throughout that period, and
(c) the account-holder has not been informed in writing of the matters mentioned in subsection (2) within that period,
the account-holder must be informed in writing of those matters without delay.

(2) The matters referred to in subsection (1) are -
(a) the fact that the current account is overdrawn or the overdraft limit has been exceeded,
(b) the amount of that overdraft or excess,
(c) the rate of interest charged on it, and
(d) any other charges payable by the debtor in relation to it (including any penalties and any interest on those charges).

(3) For the purposes of subsection (1)(b) the amount of the overdraft or excess is to be treated as significant if -
(a) the account-holder is liable to pay a charge for which he would not otherwise be liable,
(b) the overdraft or excess is likely to have an adverse effect on the debtor's ability to receive further credit (including any effect on the information about the debtor held by a credit reference agency), or
(c) it otherwise appears significant, having regard to all the circumstances.

(4) Where the overdraft or excess is secured on land, subsection (1)(a) is to be read as if the reference to one month were a reference to three months”.

To ensure subscribers are fully aware of this requirement, I recommend that a paragraph is inserted into section 5 to give effect to this statutory provision.
Interest Rates

37 Paragraph 60: Before taking interest, subscribers should give at least 14 days notice of how much will be taken.

It has been suggested that Paragraph 60 should be amended to provide 30 days notice for the taking of interest to bring it in line with changes to terms and conditions. This suggestion has not been supported by any evidence as to why 14 days is not sufficient. Furthermore, this provision does not relate to any “change” as with terms and conditions for the consumer. I am of the opinion that this is not necessary and do not recommend change.

38 Paragraph 63: Where an overdraft interest rate tracks changes to an index rate, the requirement to inform customers of changes does not apply.

Suggestion has been made in the Submissions that Paragraph 63 does not accord correctly with the new statutory provisions under section 78A of the Consumer Credit Act 1974. I am of the view that the Paragraph does meet with the requirements under the 1974 Act, therefore I do not recommend amendment to the Code.

Charges

39 Paragraph 60 imposes a requirement on subscribers to provide customers with at least 14 days notice of the taking of interest in respect of current account overdrafts. The provisions under the ‘Charges’ heading for current account overdrafts however, contain no such requirement to pre-notify. It is my understanding that banks do already generally notify customers of these charges, therefore I recommend a provision is inserted into the Code to reflect this.
Section 6: Credit cards

40 Following the BIS review of Credit and Store cards the Government reached a Joint Commitment with credit card providers for 5 new rights for credit and store card users:

/ **Right to repay**: consumers’ repayments will always be put against the highest rate debt first. For consumers opening new accounts the minimum payment will always cover at least interest, fees and charges, plus 1% of the principal to encourage better repayment practice

/ **Right to control**: consumers will have the right to choose not to receive credit limit increases in future and the right to reduce their limit at any time; and consumers will have better automated payment options. Consumers will be able to do both of these online

/ **Right to reject**: consumers will be given more time to reject increases in their interest rate or their credit limit

/ **Right to information**: consumers at risk of financial difficulties will be given guidance on the consequences of paying back too little; and all consumers will be given clear information on increases in their interest rate or their credit limit including the right to reject

/ **Right to compare**: consumers will have an annual statement that allows for easy cost comparison with other providers

/ In addition, consumers who are at risk of financial difficulties will be protected through a ban on increases in their credit limit as well as the ban on increases in their interest rate.

The new provisions, with the exception of that relating to the annual statement, will be added as an addendum to the existing Code from 1 January 2011 and will then be fully incorporated into the new Code in March 2011.

Pre-Sale Information

41 The Pre-Sale Information provisions in section 6 will be required to be compliant with the 2010 Regulations implementing the Consumer Credit Directive, the main aspects being the new Standard European Consumer Credit Information (SECCI), and the requirement to provide pre-contract information “in good time”. I recommend that the Summary Box referred to in Paragraph 67 is maintained in addition to any requirements for a SECCI and further that an example of this is provided in Annex A.

42 Paragraph 68 should also be updated to reflect the Consumer Credit Directive “good time” requirement.

43 It has been suggested that the issuing of new credit cards should not be unsolicited even to replace an existing card, however I am of the opinion that this would not be an appropriate recommendation for the Code. If a customer has already been issued with a credit card then a replacement for the expiry of a card should not be classed as unsolicited.
Interest Rates

44 I recommend the provisions on ‘Pre-notification of Interest Rate Increases’ and ‘Rejection of Interest Rate Increases’ detailed below in the ‘Risk-based Repricing’ heading should also be inserted under the ‘Interest Rates’ heading. In addition, a paragraph providing for the ban on interest rate increases for customers in financial difficulties should be added.

Risk-based Repricing

45 Paragraph 80: Subscribers should not increase the standard interest rate on a credit card within the first 12 months after the account is opened. Subscribers should not increase the rate on a credit card more often than every 6 months after its first year of operation.

It has been suggested that the requirement not to increase the standard rate of a credit card within the first 12 months after account opened is not long enough, nor is it reasonable to re-price every 6 months. Without further reasoning for this suggestion I fail to see how this can be substantiated. Furthermore, Paragraph 80 is not a positive obligation on subscribers to re-price after 12 months or every 6 months, it merely provides that they should not do so within these timescales. Without evidence that this is a wide scale problem I am not prepared to suggest any amendment.

46 As with the ‘Interest Rates’ heading above, the provisions from the Joint Commitment on the “Pre-Notification of Interest Rate Increases” and “Rejection of Interest Rate Increases” should be inserted under this heading.

Pre-notification of Interest Rate Increases:

Subscribers will provide written notice (which may include individual electronic communication where the customer has indicated his willingness to receive communications in this form) to customers of any interest rate increase. Such notice must be given at least 30 days before the interest rate increase takes effect. The notice will include the following information:

/ Current interest rate;
/ The new increased interest rate;
/ An indicative cost impact of the increase (by either a generic or personalised example); and
/ Notification of the customer’s ability to reject the increase during the period of 60 days specified in the notice and pay the outstanding balance in full at the current rate

For a general interest rate increase the notice of increase may be sent with the customer’s statement.
For a risk-based rate increase, the notice of interest rate increase will be a communication sent separately from any account statement.

Rejection of Interest Rate Increases

The 60 day rejection period (referred to in the section above on Pre-Notification of Interest Rate Increases) may run concurrently with the 30 day notice period and if this is the case, the written notice will make this clear to the customer.

During the 60 day rejection period, the subscriber will remind the customer of their right to reject the interest rate increase, which will require the subscriber to close the account and the customer to re-pay the outstanding balance. This reminder may be included on the customer’s account statement and does not need to repeat the detail included in the original notification.

The customer may tell the subscriber, at any time during the 60 day rejection period specified in the notice of increase, that they wish to reject the interest rate increase.

Where the customer rejects the rate increase:

- The customer’s credit card account will be closed by the subscriber; and
- The customer will be permitted to pay their outstanding credit card balance at their pre-notification interest rate in line with the guidance contained within the Statement of Principles relating to Credit/Store Card Risk-Based Re-pricing issued by The UK Cards Association.

The Submissions contain a suggestion that the reasoning for repricing should always be provided to the customer and not only “if asked by the customer”. The LSB ‘Themed Review of Compliance with the Lending Code’s Provisions on Risk Based Credit Card Repricing’ has stated that “card providers should be able to explain to customers how their account behaviour or risk profile has led to a rate increase”, however they do not suggest that this should be obligatory. I am satisfied to sustain the current position that this information should be given only if the customer asks.

Credit Card Limits

This sub-heading should incorporate the following provisions from the Joint Commitment:

Credit card limit changes

Customers may at any time;

1. Request a reduction in their existing credit limit;
2. Reject an unsolicited credit limit increase;
3. Inform the subscriber that they do not want to be given a credit limit increase at all in the future;  
4. Request an increase in their credit limit. 
If a customer exercises any of these rights it does not prevent them from asking for a credit limit increase at a later date. 

In the case of 1 and 2 above, subscribers will make it as easy as possible for customers to exercise these options by offering them automated methods of communication, such as online (for example, using a specified proforma) or through an automated telephone system (or another automated communication method). Customers will also be able to speak to a member of staff about their credit request or rejection. 

Before giving a customer a credit limit, or increasing an existing limit, subscribers should assess whether they feel the customer will be able to repay it. Subscribers should follow The UK Cards Association best practice guidelines for credit card limit increases http://www.theukcardsassociation.org.uk/best_practices/ 

**Communication of Unsolicited Credit Limit Increases** 

A subscriber will provide written notice to a customer (which may include individual electronic communication where the customer has indicated his willingness to receive communications in this form) of its intention to increase the customer’s credit limit and such notice will be given at least 30 days before the limit increase is due to take effect. This communication will be separate from any account statement and will include the following information: 

- Current credit limit;  
- The new increased credit limit;  
- The customer’s right to reject the credit limit increase;  
- How the customer can reject the proposed credit limit increase and reassurance that the subscriber will not treat them any differently simply because they exercise their right to reject a credit limit increase. 

Such notice need not be given where a subscriber gives a customer a temporary or an emergency credit limit increase. 

49 Paragraph 90: *Credit card limit increases should not be offered on accounts that are in arrears and should not be granted for accounts that fall below credit scoring thresholds.* 

I recommend this paragraph is amended to incorporate from the Joint Commitment “consumers who are at risk of financial difficulties will be protected through a ban on increases in their credit limit”. 

50 Concern has been put forward in the submissions of the negative impact on customers when they turn down an unsolicited credit limit increase. It is suggested that subscribers are
limiting the ability of a consumer to ask for a limit increase in the future due to a previous rejection of an increase. I am pleased to note the Joint Commitment has addressed this concern by stating in the paragraph for Credit Card Limit Changes: “If a customer exercises any of these rights it does not prevent them from asking for a credit limit increase at a later date”.

Paragraph 92: Where the subscriber feels it is appropriate, the credit card limit should be reduced and notification given to the customer.

I recommend consideration is given to adding to this provision that in the notification to the customer it should be explicit that the customer should contact the bank if the proposed credit limit reduction will cause them difficulties.

**Credit Card Statements**

The Joint Commitment provides that “Subscribers will provide customers with an annual statement that shows how much their credit card has cost them over a year. This statement will be available in an electronic format”.

I understand the format, content and timescale for issue of the Annual Statement are still being considered by the industry, however I welcome this important provision and recommend reference to the Annual Statement in the Code.

**Credit Card Repayments**

The Joint Commitment also provides for insertions to this area of the Code and the following paragraphs should be fully incorporated:

**Allocation of payments**

Subscribers will apply customers’ repayments to the most expensive parts of the credit card balance first. This means that repayments will be applied to the various elements within the balance ranked by order of their annual interest rate (not APR) on a pure high to low basis.

In allocating customer repayments as above, subscribers will apply them to, at least, statemented transactions.

**Hybrid credit products**

In the case of ‘hybrid’ credit products where the total credit provided and accordingly the balance may be made up of both fixed and revolving credit elements, the requirement to allocate payments to the most expensive part of the balance first applies only in respect of any payment made in excess of that required to satisfy the fixed instalment(s) as specified in the agreement.
Minimum repayments for credit card accounts

Subscribers should ensure that for customers opening a new credit card account that the calculated minimum payment will always cover at least:

/ 1% of the principal owing; and
/ the amount of interest that appears on the statement; and default fees / charges; and
/ annual fees that may be levied (whether as a single sum, twelve equal instalments or other method).

The ‘principal owing’ means the outstanding balance shown on the statement less the current month’s interest and fees. ‘Fees’ do not include fees for services such as balance transfer or cash advances”.

It will be crucial for the Code to provide the distinction for minimum repayments for new credit card accounts for which the Joint Commitment provisions will apply from 1 January 2011 and that for existing credit card accounts which will follow the current provisions in Paragraph 100: Subscribers should ensure that the minimum monthly repayment covers more than that month’s interest. This means that the minimum repayment will cover that month’s interest and a proportion of the balance outstanding from the previous month.

New paragraphs should also be added to the Code under ‘Credit Card Repayments’ providing for the following:

Automated Payments
Subscribers will provide customers with online capability to set up an automated payment, for any amount they choose between the minimum payment and full payment, which will be used to reduce their balance. ‘Online’ could include a customer sending an instruction to the subscriber via email if the subscriber has agreed to receive instructions using this method.

Minimum Payment Advice Communication
Subscribers must follow the industry agreement developed by The UK Cards Association on the sending of a separate advice communication where a customer, without a good reason, has made frequent minimum repayments or low repayments.

Credit Card Cheques

Section 15 of the Financial Services Act 2010:

Restrictions on provision of credit card cheques
(1) The Consumer Credit Act 1974 (“the CCA 1974”) is amended as follows.
(2) After section 51 insert -
“51A Restrictions on provision of credit card cheques
(1) A person who provides credit card cheques otherwise than in accordance with this section commits an offence.
(2) Credit card cheques may be provided only to a person who has asked for them.
(3) They may be provided only on a single occasion in respect of each request that is made.
(4) The number of cheques provided in respect of a request must not exceed three (or, if less, the number requested).
(5) Where a single request is made for the provision of credit card cheques in connection with more than one credit-token agreement, subsections (3) and (4) apply as if a separate request had been made in relation to each agreement.
(6) Where more than one request for the provision of cheques is made in the same document or at the same time -
   (a) they may be provided in respect of only one of the requests, but
   (b) if the requests relate to more than one credit-token agreement, in relation to each agreement they may be provided only in respect of one of the requests made in relation to that agreement.
(7) “Credit card cheque” means a cheque (whether or not drawn on a banker) which, whenever used, will result in the provision of credit under a credit-token agreement.
(8) Accordingly, “credit card cheque” does not include a cheque to be used only in connection with a current account.

It is my understanding that section 15 of the Financial Services Act 2010 is no longer to be implemented, however the submissions are still seeking the impact of the provisions be provided for, namely a ban on the issuing of credit card cheques except when requested. In my view this is the correct approach and I therefore recommend that the Code Sponsors provide this in the Code.

Unauthorised Transactions

56 The Lending Standards Board Code Compliance Team are currently reviewing the approach to unauthorised transactions taken by credit card providers. I therefore recommend that on completion of this review, the Lending Code provisions should be updated accordingly to take account of their findings.

57 An issue recently brought to the attention of the LSB is the difficulty faced by customers when cancelling ‘continuous payment authorities’. It has been suggested that the failure of subscribers to ensure cancellation of these payments should be deemed to be an ‘unauthorised transaction’. There is currently no provision under the ‘Unauthorised Transactions’ heading on this matter, however, the LSB review will also take account of the issue and make any recommendations as appropriate.

Other Recommendations

58 A complexity in relation to the applicability of specific sections of the Code other than to personal customers has been highlighted in the Submissions. This has been brought about
The Joint Commitment has addressed this by stating that “the Commitments have been drafted for personal customers but may be extended to commercial cards at an issuer’s discretion”. I recommend this is clearly stated in the Code.

59 The Code provisions in relation to Overdrafts and Loans both provide a paragraph for credit applications being declined, however section 6 (Credit cards) does not contain such a provision. I would suggest this is an omission and recommend that a provision on the same terms as Paragraph 56 and 116 is inserted to provide for an explanation to consumers when their application for a credit card is declined. This would allow for consistency throughout all the credit products that the Code aims to protect.

60 Chargeback arrangements give additional protections for consumers beyond those provided for by Section 75 of the Consumer Credit Act 1974.

The Submissions suggest that these additional protections are not well known amongst consumers.

I recommend that the Code inserts a requirement for subscribers to make consumers aware of any protections beyond Section 75 where appropriate. These protections should also be explained in the Consumer Facing Document.
61 Paragraph 116: If a customer’s loan application is declined, the subscriber should explain the main reason if asked by the customer. This could be provided in writing or electronically.

I recommend that this paragraph should be amended in conjunction with the other paragraphs in the Code that relate to declining credit applications. It is important that subscribers provide to customers the main reason for their application being declined and this should not be dependant on the customer specifically asking for the reasoning.

62 Paragraph 118: If, after declining an application for credit, subscribers wish to refer a customer to another lender, they should make the customer aware that a referral is not an indication that a subsequent application for credit will be successful.

In my opinion, Paragraph 118 requires redrafting. A decision to refer a customer to another lender following a failed credit application should be made after express consent from the customer, this should be explicitly stated in the Code. I agree with the statement that subscribers should make a customer aware that no subsequent application will automatically be successful and this should remain.

63 Submissions have been made for updating the Code provisions in relation to Guarantees. I am satisfied that this area is sufficiently covered by Statute, Common Law and the existing Code provisions and therefore do not recommend any amendments to this area.

64 Paragraph 124: Subscribers should ensure that they follow the BBA Statement of Principles when lending to micro-enterprises. The statement is included at Annex B.

This paragraph should refer to the BBA 6 Commitments to SMEs, referenced above.
I do not have any comments to make in relation to Section 8: Terms and conditions.
Paragraph 137: Subscribers should be sympathetic and positive when considering a customer’s financial difficulties. Although there is an onus on customers to try to help themselves, the first step, when a subscriber becomes aware of a customer’s financial difficulties, should be to try to contact the customer to discuss the matter. This applies to both personal and micro-enterprise customers.

Many of the Submissions have addressed the concept of “sympathetic and positive” and are seeking definition, guidance, clarification, and examples of such behaviour to be inserted into the Code. Much of the discussion at meetings focussed on the most appropriate way to address this matter. I gave a lot of thought to whether a detailed definition in the Code, specifically in section 9 was the best way forward, however feedback from the meetings was that this would not fit with the nature of the Code.

Although I do not believe a descriptive definition is appropriate, the current approach is not satisfactory. In light of significant weight in the Submissions, consideration should be given to providing examples in the Consumer Facing Documents and issued as case studies in the LSB Bulletins and Annual Reports of “sympathetic and positive” behaviours that customers are entitled to expect.

Paragraph 139:

Financial difficulties may become evident to a subscriber from one or more of the following events:

/ Items repeatedly being returned unpaid due to lack of available funds;
/ Failing to meet loan repayments or other commitments;
/ Discontinuation of regular credits;
/ Notification of some form of insolvency or court proceedings;
/ Regular requests for increased borrowing or repeated rescheduling of debts;
/ Making frequent cash withdrawals on a credit card at a non-promotional rate of interest;
/ Repeatedly exceeding a credit card or overdraft limit without agreement.

I recommend Paragraph 139 specifically states that the above list is “illustrative and non-exhaustive”.

The triggers listed above in Paragraph 139 for subscribers to use to identify someone in financial difficulties also have one major omission - the customer informing the bank that they are in, or heading for, financial difficulties. This provision should be added to the paragraph.
Proactive Contact

Paragraph 141: If, during the course of a customer’s account operation, a subscriber becomes aware via their existing systems that the customer may be heading towards financial difficulties, the subscriber should contact the customer to outline their approach to financial difficulties and to encourage the customer to contact the subscriber if the customer is worried about their position. Subscribers should also provide signposts to sources of free, independent money advice.

Written Submissions and feedback from meetings have highlighted concern around the obligations on subscribers under Paragraph 141. The issue relates to the ability of internal systems to adequately deal with good faith customers who explain that because of redundancy or other changes to their circumstances they are likely to enter financial difficulties.

The evidence from the debt advice bodies in particular is that banks are waiting for customers to be in arrears, sometimes by as much as three months, before any consideration is given to proactively engaging with a consumer. This to me is far more reactive than proactive and this paragraph needs to be amended to better address the situation. Particular provision needs to be made for customers “approaching financial difficulties” so as to ensure, if possible, that any plans can be put in place before arrears become problematic for a customer.

Consideration should be given to amending this section to fully appreciate that not only can the bank systems identify when a customer is in financial difficulties but that acceptance of direct instructions by the customer should be considered and accepted. Evidence of an imminent change in circumstances, especially in this economic climate of redundancies, should be enough for a bank to respond to and provide the assistance, if applicable, that section 9 aims for. Exception could be provided where subscribers acting reasonably believe the customer is not genuine.

Paragraph 143: Subscribers should make available to customers straightforward information in plain English on their procedures and systems for dealing with customers in financial difficulty. This might explain, for example the main rights and responsibilities of customers and subscribers, and what is involved in legal demands or a referral to a debt recovery unit. The BBA publishes a leaflet, Dealing with Debt, which is available on the BBA and The UK Cards Association websites.

The terms in Paragraph 143 would be appropriate to be included in the Consumer Facing Documents to further provide consumers with what they can expect when they are in, or entering, financial difficulties.
Repayment Plans

70 The Submissions have sought for the Code to provide more detail of what a repayment plan looks like. In my view a definition would be helpful and consideration should be given to including this in the Glossary.

71 Paragraph 148: Repayment plans between subscribers and customers may be subject to regular review. Any review period will be agreed with the customer or their adviser, and subscribers should seek to revise contributions only at the end of the review period or if a customer’s personal circumstances change. (Customers and/or their advisers should inform the subscriber if the customer’s personal situation changes).

I recommend this paragraph is amended to provide that consumers should not be expected to increase their offer at the review stage unless their financial situation has improved.

Debt Collection Agencies

72 Paragraph 150: Subscribers should use all reasonable endeavours to ensure that the Code standards for handling financial difficulties are applied by such agents. Code compliance standards should form part of all third party contracts.

In my view this paragraph should state: “Subscribers must ensure that the Code standards…” and I recommend the paragraph is amended accordingly.

73 The submissions have raised a number of concerns in relation to the passing of information by subscribers to third party debt collection agencies and to third parties following a debt sale, in particular that the history of the debt is not always accurate and up to date. A review of debt sales is currently underway by the LSB and once this is completed the LSB may wish to seek the agreement of the Sponsors to further changes to the Code to address any concerns identified.

Consolidation Loans

74 Paragraph 155: Where a consolidation loan is being provided to a personal customer and the subscriber considers the customer to be in financial difficulties, the subscriber should reduce or pay off the existing in-house borrowing that it is aware is being consolidated. This applies only where the existence of such in-house borrowing is apparent to subscribers via their existing in-house systems.

The provisions for consolidation loans sit specifically within the financial difficulties section of the Code which is indicative and should be kept in mind when considering amendments. Consideration also needs to be made for the temptation for consumers in financial difficulties to accept the consolidation loan but not use it to repay existing debts.
At stakeholder meetings there was lively debate regarding my suggestion that there should be an obligation on subscribers to seek to repay, on their customer’s behalf, the sums outstanding on loans being consolidated. Concerns were expressed by the industry that an obligation to repay existing debts would not be legally competent. However, I am of the view that a process to repay current lending being consolidated would be appropriate, where reasonable. I accordingly recommend that this Paragraph 155 should be amended to read:

“Where a consolidation loan is being provided to a personal customer and the subscriber considers the customers to be in financial difficulties, the subscriber should reduce or pay off the existing borrowing that it is aware is being consolidated.”

75 I recommend that explicit provision is made in the Code to ensure that the cost of the consolidation loan to the consumer is no more than they are currently paying in relation to the existing debts being consolidated.

76 Paragraph 156: Exceptionally there may be circumstances in which it is appropriate not to reduce or pay off existing borrowing.

In my view, this paragraph is sufficient and should remain in the Code to address the concern raised by the stakeholders and provide an exception where necessary.

**Breathing Space**

77 Paragraph 157: Where a not-for-profit debt advice agency has formally notified a subscriber that the customer is in serious discussion with them on a draft debt repayment plan then the subscriber should suspend collections activity related to the customer’s current account, credit card and/or unsecured personal loan while these discussions continue, provided that they are concluded within 30 days.

The breathing space provisions are a specific example of an area that currently applies to consumers only when they are engaged with a “not-for-profit debt advice agency”. In my opinion, and in agreement with the responses and oral presentations this should not be the case. Subscribers should not disadvantage customers who are using self-help methods. I note that concern has been put forward in relation to consumers attempting to use the breathing space provisions merely to avoid paying their debts and not because they are actually in financial difficulties. The concept of self-help has not generated opposition from the industry but it is crucial in drafting the provisions that the concern noted above is addressed and to ensure the provisions are fit for purpose.

My recommendation therefore, is that Paragraph 157 should be amended to remove the requirement to be working with a debt advice agency and that subscribers should be expected to suspend collections activity where the customer (rather than a money advice professional) has notified the subscribers that they are developing a plan. However, there should be a qualification that the customer approach has to be a genuine attempt to develop a repayment plan.
The concept of breathing space and consumers compiling their own repayment plans has also been provided for in the OFT Irresponsible Lending Guidance where they state at paragraph 7.12:

“…similar breathing space should be extended to a borrower where it can be evidenced that he is developing a plan on his own account for repaying the debt; that is to say, without the assistance of a debt advisor”.

I further recommend that consideration be given to specifically stating in this section what banks should and should not be doing during the breathing space. Concern was raised in the Submissions that banks were continuing to take internal loan repayments and effectively giving themselves preferential status over other creditors. This is counterproductive for consumers who are working to put together a plan if they are being further indebted during this crucial planning stage.

78 Paragraph 158: In exceptional circumstances where discussions are progressing but have not been concluded within the initial 30 days the debt advice agency can ask the subscriber for an additional 30 days breathing space.

The submissions have called for Paragraph 158 to be amended so that the extension of breathing space by a further 30 days is granted except in exceptional circumstances. I agree with this approach as delays can be unavoidable due to pressure on debt advice bodies to make appointments. I would recommend amendment of this paragraph to provide that the extension should be granted unless there is good reason not to.

Communicating with personal customers and advisers

79 Paragraph 159: Communications with customers and/or their advisers should, wherever possible, acknowledge and reflect any previous discussions that have taken place. Subscribers should be willing to communicate with customers and/or their advisers by phone, post, secure email or fax. Normally, the subscriber will communicate through the adviser, if an authority has been received. This does not preclude subscribers from copying correspondence to customers if they choose. In certain circumstances it may be beneficial for discussions (either face-to-face or over the telephone) between the adviser and subscriber to take place with the customer present.

Debt advice bodies are concerned that even when they have notified banks that they are working with one of their customers, the bank continues to communicate directly with that customer rather than engaging with the debt advisor. This can cause distress to customers particularly when they have taken the active step of contacting an advisor and can be frustrating for the advisor who is trying to liaise with all relevant parties.

I recommend that Paragraph 159 should be amended to provide that if a subscriber has received notification that a customer is working with a debt advice agency then they should
always communicate directly with the advisor and remove the reference to “normally” that is currently in the Code.

Paragraph 160: **On occasions the subscriber may need to contact the customer directly, even when an authority is in place. These occasions may be the result of the adviser not being available, failing to provide requested information within a reasonable period of time, or other similar circumstances.**

The exception in Paragraph 160 should remain but be amended to recognise there will be circumstances where a legal requirement will mean the bank have to contact the customer directly. However, the paragraph should explicitly provide that if subscribers are contacting the customer directly they should provide them with an explanation as to why they are doing so.

### Debt recovery procedures

Paragraph 163: **The subscriber should take into consideration any other accounts that the customer may have with the subscriber if these have a credit balance. In addition, if a customer has assets which could reasonably be expected to be sold to reduce outstanding debts, the subscriber may request that the customer, and if appropriate, their adviser, considers this option. Thereafter, the subscriber should acknowledge that income should only be used to repay ‘non-priority’ debts once provision has been made for any ‘priority’ debts. The subscriber should leave the customer with sufficient money for reasonable day-to-day expenses, taking into account individual circumstances. Subscribers will not subject customers to harassment or undue pressure when discussing their problems.**

Paragraph 163 addresses two separate matters, firstly the use of credit balances to repay debts, and secondly the sale of assets to satisfy a debt.

With regards to asset sales, consideration should be given to continuing the provision in Paragraph 163, however the wording should be tightened.

In relation to the use of credit balances, I recommend that the reference in Paragraph 163 is removed and that the new section on “Use of the Right of Set Off” is incorporated at this point in the Code.

### Use of the Right of Set off

An important security right for subscribers is the right of set off. This allows banks to apply a credit balance against missed loan and credit card repayments where the customer holds both accounts with the bank.

There is concern in the Submissions as to the practical implications for customers. For the majority of customers, set off will never be used on their accounts and even if it was to be,
evidence suggests that it would be beneficial to them as they may have “forgotten” to make a payment to, for example, their credit card provider. In a minority of cases however, the Submissions suggest that the exercising of this right can be extremely detrimental. There has also been considerable public interest highlighting that this may exacerbate the problem and cause further indebtedness.

I am concerned with the advice currently being provided by the debt advice sector to consumers in financial difficulties. If a customer holds a current account and a credit account with the same provider, they are being advised to switch their current account to another provider in an attempt to avoid set off. In my view this is understandable due to the lack of transparency and understanding of set off, however it is extremely wasteful.

The LSB published minimum standards on the “Use of the Right of Set Off” in May 2010 and it is my recommendation that these are fully incorporated into section 9 under a new heading – “Use of the Right of Set Off”.

The FSA are currently carrying out a consultation on the use of set off and therefore in drafting the Code, the LSB will require to give consideration to their findings and amend the standards as appropriate.

Submissions were made that sought the Code to provide that when exercising set-off, subscribers should ensure that a minimum of £1,000 is left in the current account. In my view, this would not be practical for the banking industry and therefore I will not be making a recommendation to this effect.

**Token Offers**

83 Paragraph 165: *Token offers may be accepted where the customer has demonstrated they have no surplus income available for their ‘non-priority’ creditors and there is a realistic prospect of the customer’s circumstances improving. A token offer will not necessarily be sufficient to prevent the subscriber from selling the debt to a third party debt recovery agent and to prevent the debt from being registered as a default with the credit reference agencies.*

It has been submitted by the industry that token offers cannot always be accepted because the cost of processing the payments may be larger than the token payment itself, e.g. £1. However, I do not doubt that could apply to the terms of any account. The provisions have, in my view, an underpinning principle that debtors who have a genuine desire to repay their debts with a “realistic prospect of the customer’s circumstances improving” should be allowed to offer token payments. For that reason I recommend “may”, which appears in line 1 should be replaced with the word “should”.

Suggestion has also been made that if a lender accepts a token offer then they should not be able to sell the debt to a third party debt recovery. In my view, this is impractical and I will not be recommending incorporation into the Code.
I recommend that consideration is given to providing a definition of “token offer” in the Glossary.

**Common Financial Statement**

Paragraph 167: If a customer works with a debt-counselling organisation to complete a Common Financial Statement (CFS), the subscriber should accept the CFS as the basis for negotiations with the customer to draw up a debt-management plan.

A number of Submissions have proposed that provided the expenditure figures in a CFS fall within the “trigger figures” then proposals based upon them should be accepted automatically. Expenditure falling within the trigger figures should only be challenged where the lender has additional information that would suggest that use of the trigger figures may lead to an inaccurate outcome. If the expenditure figures fall outside the trigger figures then it should continue to be a basis for negotiation. I recommend that Paragraph 167 should be amended accordingly to give effect to this.

Paragraph 167 refers to “debt-management plan”, however the Submissions have identified a potential misinterpretation of the term. I recommend the wording should be amended to “repayment arrangement” or “repayment plan” to address this and that a definition is provided in the Glossary.

Paragraph 168 supplements Paragraph 167 by providing that: This provision is designed to help people in financial difficulties, and some subscribers may only apply it when accounts have gone into default. Other subscribers may choose to use the provision at an earlier stage if it benefits both them and the customer.

I am concerned that this provision could potentially disadvantage consumers who are aware of their impending financial difficulties and are seeking to put a plan in place before they enter arrears. I recommend tightening of the wording of this section to address this.

Work was carried out between AdviceUK, the British Bankers’ Association (BBA), Citizens Advice, and the Finance & Leasing Association (FLA) to create CFS best practice checklists for both creditors and advisors. These checklists aim to clarify communications and encourage best practice around CFS offers and were published on the 4th May 2010. I recommend that the creditor checklist is cross referenced in the Code and thus be subject to monitoring and enforcement by the LSB.

Submissions have called for the “Trigger Figures”, which help identify levels of monthly expenditure deemed reasonable when completing the CFS, to be referred to in the Code. I am of the view that this would be appropriate and I therefore recommend reference to the “Trigger Figures” should be made. In addition, a definition in the Glossary would be helpful.

I understand there are equivalent models to the Common Financial Statement being developed by debt advisors and other agencies e.g. the Consumer Credit Counselling
Service. I recommend that the obligations on subscribers to accept Common Financial Statements should extend to those other such models that the Sponsors, from time to time, approve.

91 CASHflow is a new standardised statement that has recently been introduced to provide consumers with advice, information and support to negotiate with creditors on their own. Whilst such offers are not generally accepted automatically, lenders should consider the merits of the case in the same way as they would if the statement had been submitted by an advice agency. I recommend specific mention of CASHflow should be made in the Code.

Debt and Mental Health

Following consideration of the written Submissions along with discussions at the stakeholder meetings I recommend the following amendments to the Debt and Mental Health section.

92 Paragraph 173: The impacts of financial difficulty can be especially acute for customers with mental health problems. Subscribers should consider their processes and systems to ensure that they can be responsive to a customer in financial difficulties, from the point at which they are made aware of a mental health problem.

I recommend this paragraph is amended to require subscribers to incorporate into their internal policies clear statements on how it responds to customers with mental health problems. They should also provide training to mainstream and specialist staff on how to deal with customers who have mental health problems.

93 Paragraph 174:

The appropriate response will differ in each case and could involve a range of approaches, including:

/ working positively with an advice agency
/ promptly carrying out agreed actions
/ being flexible in responding to offers or schedules of repayment
/ sensitively managing communications with the customer (for example preventing unnecessary and unwelcome mailings).

Consideration should be given to adding to the appropriate responses in Paragraph 174:

/ 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
Paragraph 175: Where it is appropriate and with a customer’s consent, subscribers should work with advice agencies and health and social care professionals in a joined-up way to exchange information and ensure an effective dialogue.

I recommend amendment of Paragraph 175 to incorporate the following: “Where a customer nominates a third-party individual or agency to deal with their account, creditors should suspend contact with the customer as early as possible. Furthermore, where a customer has reported having a mental health problem and having seen a money adviser, creditors should require no more than oral notification from the customer before temporarily suspending calls and letters to that customer”.

Paragraph 175 should also provide that subscribers should be expected to suspend collections activity where the customer (rather than a money advice professional) has notified the subscribers that they are seeking money advice.

Paragraph 176: With a customer’s explicit consent and in line with requirements of the Data Protection Act, where it is possible and appropriate subscribers should record relevant information about the customer on their account so that staff can deal appropriately with the customer.

I recommend this paragraph also provides that subscribers should inform the customer how their information will be used, and for what purpose.

Paragraph 177: If a subscriber has specialist staff to deal with cases of debt and mental health problems, they should ensure that appropriate mechanisms exist to refer the customer to the appropriate support.

I recommend Paragraph 177 is amended to provide that: “Subscribers are encouraged to establish a specialist team (or staff member), to deal with ‘vulnerable customers’. Where such a team exists, subscribers should ensure that appropriate mechanisms exist to refer the customer to the appropriate support.”

Paragraph 178: If a customer informs a subscriber that they have a mental health problem that is impacting on their ability to manage their financial difficulties, the subscriber should allow the customer a reasonable period (e.g. 28 days) of time to collect and submit relevant evidence to the subscriber. This evidence will help the subscriber to work with the customer, advice agencies and health/social professionals where appropriate to determine the most appropriate action to deal with the customer’s financial difficulties.

The Submissions have suggested that specific concessions should be made to suspend charges and interest for those with mental health problems. I would suggest that this is not necessary to be incorporated into the debt and mental health section, if the customer is in financial difficulties then customers would be protected by the Interest and Charges concessions.
Paragraph 180: Subscribers are encouraged to consider the DMHEF if it is presented by the customer or their adviser (with the customer’s consent).

I recommend removal of “…encouraged to consider”. Subscribers should be “expected to” consider a Debt and Mental Health Form if it has been presented. However, I do not support the suggestion that subscribers should request medical evidence directly from a health or social care professional. In my opinion this extends too far and is not an appropriate amendment to the Code.

Paragraph 181: If a subscriber has received appropriate and relevant evidence of a customer’s mental health problems they should consider whether it is appropriate to pass or sell the customer’s debt to a third party debt collection agency.

I recommend this paragraph is amended to require subscribers to advise customers prior to any passing or selling of the debt to a collection agency.

Paragraph 183: Further and more detailed good practice guidelines have been produced by MALG and are available at: http://www.moneyadvicetrust.org/download.asp. The MALG guidelines will not be monitored and enforced by the Lending Standards Board.

Written Submissions and oral feedback at stakeholder meetings have suggested that the MALG Guidelines are now well established in the industry and therefore subscribers’ adherence to the measures should be monitored and enforced by the LSB. I fully support this view and recommend the Code is amended accordingly.

I am aware that further research is ongoing in this area, particularly in the need to train staff and referrals to specialist teams, which may result in further best practice guidelines.

**Other Matters to be considered in relation to Section 9 of the Code**

*Interest and Charges Concessions*

In January 2010, following work by the LSB Code compliance team, the LSB issued guidance to subscribers on “Interest and Charges Concessions for Customers in Financial Difficulties”. The guidance should be applied when a customer has “demonstrated that they are unable to pay and are willing to co-operate with their lender(s)” and contain the following provisions:

/ Firms should consider reducing or stopping interest and charges when a customer evidences that they are in financial difficulties
/ It would be inappropriate for interest and charges to continue to be taken where the result would be that the repayment period for the customer becomes excessive
/ Concessions should not be arbitrarily withdrawn irrespective of a customer’s ability to pay or any evidence of a change in the customer’s circumstances
Where possible, firms should operate consistent policies for customers holding more than one product type in terms of charges and interest concessions.

Where a customer is unable to make repayments that are sufficient to meet a lender’s minimum requirements for a debt repayment plan, the customer must be given clear information on the effect this will have on his position and the options open to him.

I recommend that this guidance is fully incorporated into section 9 and that it is best placed in the section of ‘Additional provisions for personal customers in financial difficulty’ as it will be relevant to the breathing space provisions as well as the sections on token offers and Common Financial Statements.

**Appropriate use of enforcement methods**

103 Concern has been raised by the debt advice bodies that consumers are being distressed having received threats of court actions and enforcement methods that are not relevant to the jurisdiction within which they live. In particular, Scottish debtors have been threatened with the use of bailiffs who do not exist in Scotland.

The OFT Debt Collection Guidance states: “Taking or threatening to take court action in the wrong jurisdiction, for example, taking action against a Scottish debtor in an English court unless legally justified” is an unfair practice. I recommend a new paragraph providing that subscribers must ensure that the selected 3rd party for debt collection complies with the OFT Debt Collection Guidance, and ensure court actions and enforcement methods are relevant to the jurisdiction of the customer.

Furthermore, subscribers and nominated 3rd party debt collection agents should not initiate court proceedings while a customer has complained to the Financial Ombudsman Service. This is provided for in the OFT Irresponsible Lending Guidance, paragraph 7.9:

“…it would not be appropriate for creditors to initiate court proceedings where it is known or understood that the borrower has submitted a reasonable complaint relating to the credit agreement that is being considered by the Financial Ombudsman Service”.

I recommend both of these measures should be incorporated into the Code.

**First right of appropriation**

104 The first right of appropriation allows consumers to tell their banks how their funds should be distributed. The Submissions have called for this area to be considered for inclusion within the Lending Code, however this is outwith the scope of this review as it is primarily a matter for the FSA. The LSB may wish however, to raise the matter with the FSA for consideration.
Section 10: Complaints

105 The Submissions are looking for more direction of customers to the Financial Ombudsman Service as a complaints body for service failure. I recommend information to this area of redress is provided for in the Consumer Facing Documents.
Visibility of the outcomes of code compliance monitoring and reviews undertaken by the Lending Standards Board Code Compliance Team are key to addressing the concerns about transparency of the Code for customers.

I recommend that Guidelines agreed between the LSB and Sponsors following monitoring and reviews should be published on the Lending Standards Board website.

The LSB Annual Report and Bulletins should also contain case studies of the experiences of the LSB Code compliance team, in particular illustrations of "sympathetic and positive behaviour".

Additionally, the Consumer Facing Documents should highlight the LSB website to customers where they can access guidance and case studies issued by the Lending Standards Board and the Code Sponsors.
This section should maintain an example of the Summary Box for unsecured loans and should be extended to also provide an example for credit cards as per the recommendations in relation to Paragraphs 19 and 67.
Annex B: Statement of Principles

108  Annex B should incorporate the new BBA Commitments for lending to SMEs as per the recommendations above.
I have found this review both interesting and challenging. My recommendations are supported by appropriate evidence and I hope that they find favour with the Board and your subscribers.

19th November 2010
The Lending Code

Setting standards for banks, building societies and credit card providers

November 2009
Compliance with this Code is independently monitored by the Lending Standards Board (LSB). Further information regarding the LSB and the Code, including a list of subscribers, can be found at www.lendingstandardsboard.org.uk.
Contents

Introduction 4

Section 1 Key commitments 5
Section 2 Communications and financial promotions 6
Section 3 Credit reference agencies 8
Section 4 Credit assessment 9
Section 5 Current accounts overdrafts 10
Section 6 Credit cards 12
Section 7 Loans 17
Section 8 Terms and conditions 19
Section 9 Financial difficulties 20
Section 10 Complaints 25
Section 11 Monitoring 25

Annex A Summary box for unsecured loans 26
Annex B Statement of Principles for micro-enterprises 30
Introduction

1. This is a self-regulatory Lending Code setting minimum standards of good practice when dealing with the following customers in the UK:
   - Consumers;
   - Micro-enterprises\(^1\); or
   - Charities with an annual income of less than £1 million.

2. The Lending Code covers good practice in relation to:
   - loans;
   - credit cards;
   - charge cards\(^2\); and
   - current account overdrafts.

   It does not apply to merchant services, non-business borrowing secured on land, or to sales finance.

3. The Code applies to lending in sterling. However, subscribers are not precluded from applying the Code’s standards to lending in other currencies.

4. Compliance with the terms of this Code is independently monitored and enforced by the Lending Standards Board (LSB). A list of subscribers to the Code and contact details for the LSB can be found at www.lendingstandardsboard.org.uk.

5. This Code has not been reviewed by the FSA and the FSA will not have regard to this Code when exercising its regulatory functions.

6. This Code sets standards of good lending practice but subscribers must - at all times - ensure they are compliant with the Consumer Credit Acts and associated Regulations as well as other relevant legislation (such as the Payment Services Regulations (PSRs) and, for consumers, the Consumer Protection from Unfair Trading Regulations).

7. It is important that, when considering how the Code will affect products and services, all delivery channels are catered for. The Code applies regardless of how a product or service is delivered.

8. It is the responsibility of subscribers to ensure that any third party or agent acting on their behalf complies with the Code in relation to any products or services covered by this Code.

9. Subscribers should make information available to customers to inform them that the subscriber follows the Lending Code. This should include providing a link to the Code on the subscriber’s website and, where appropriate, making reference to the Code within relevant literature (for example, within an account-opening pack). The subscriber’s website and relevant literature should be amended to include reference to this Code within a six month transitional period that ends on 30 April 2010.

10. Unless otherwise specified all references in this Code to ‘customer’ or ‘customers’ apply to personal and micro-enterprise customers.

11. This Code uses the terms ‘provide’, ‘give’, ‘tell’ and ‘make available’ interchangeably. These terms are not defined to specify how information is made accessible to the customer. Instead, firms should determine the most appropriate way for customers to access information at the right time in order to make informed decisions.

12. However, where this Code requires that certain information is given to customers ‘personally’, this means that some form of notification is given or sent to them, rather than being told by a general notice or advertisement. Such notification could be made by letter, by e-mail or by an alternative method that reflects the manner in which the product or service is normally operated.

\(^1\) A micro-enterprise is defined as a business that employs fewer than 10 persons and has a turnover or annual balance sheet that does not exceed €2 million. For more information see http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf

\(^2\) Charge cards are subject to the Key Commitments and general provisions of this Code, where a requirement is not specific to another product.
Section 1: Key commitments

13. Subscribers will act fairly and reasonably in all their dealings with customers by, as a minimum, meeting all the commitments and standards in this Code. The key commitments are shown below.

- Subscribers will make sure that advertising and promotional literature is fair, clear and not misleading and that customers are given clear information about products and services.

- Customers will be given clear information about accounts and services, how they work, their terms and conditions and the interest rates that apply to them.

- Regular statements will be made available to customers (if appropriate). Customers will also be informed about changes to the interest rates, charges or terms and conditions.

- Subscribers will lend money responsibly.

- Subscribers will deal quickly and sympathetically with things that go wrong and act sympathetically and positively when considering a customer’s financial difficulties.

- Personal information will be treated as private and confidential, and subscribers will provide secure and reliable banking and payment systems.

- Subscribers will make sure their staff are trained to put this Code into practice.
Section 2: Communications and financial promotions

14. This section applies to financial promotions for lending products and services and communications to customers during the lifetime of the product or service.

15. The key consideration for subscribers is to ensure communications are clear, fair and not misleading and that customers are provided with appropriate information at the right time in order to make informed decisions.

16. Subscribers should ensure that financial promotions are compliant with relevant advertising legislation and industry codes of practice, such as the Consumer Credit (Advertisements) Regulations 2004 and the Committee of Advertising Practice Codes.

17. For promotions to personal customers that are made at a distance subscribers should follow the requirements of the Financial Services (Distance Marketing) Regulations 2004.

18. For direct sales of credit cards, subscribers should follow the relevant UK Cards Association best practice guidelines, which can be found at http://www.theukcardsassociation.org.uk/best_practices

19. For some unsecured personal loans, key product information within financial promotions and pre-sale information should be available in a standard summary box. Details of which promotions and communications are covered and the format of the summary box are included in Annex A (p.26).

20. To ensure financial promotions and communications are clear, fair and not misleading subscribers should have regard to:

   - presenting information in plain language and wherever possible avoiding the use of technical or legal language
   - the way the communication or financial promotion is being made e.g. direct mail, letter, email, text message, branch or web material
   - the type and complexity of information that is being presented, the actions the information might elicit from the customer, the channels by which the information is accessible and the passage of time, if any, since the information was last provided
   - the appropriate format and content of the communication based on its intended audience. For instance, a communication to a personal customer might include different information to that for a micro-enterprise, where needs may differ.

21. Micro-enterprise customers should be given a copy of the BBA Statement of Principles when they become a customer and at any time they request a copy. The Statement is attached as Annex B for your information and can be ordered from the BBA website at http://www.bba.org.uk/Statement-of-principles

Marketing and advertising

22. Subscribers must have the customer’s specific permission to pass the customer’s name and address to any company, including other companies in the subscriber’s group, for marketing purposes.

23. There are various acceptable methods of obtaining the customer’s consent. It may, for example, be given by way of a clear and unambiguous clause above a signature box on an application form, or a positive ‘click’ on an internet application, or a positive reply to a specific question on the telephone. Subscribers should also be aware of the Information Commissioner’s Guidance for Direct Marketers and telecoms licensing requirements. Consent should not be required in return for the provision of standard account services.

24. Subscribers can tell customers about another company’s services or products but no confidential information about the customer should be passed to the other company by the subscriber without customer consent.

25. If the customer is interested in the other company’s products or services and they respond, then they are themselves releasing confidential information. For example, a subscriber may have a subsidiary which offers general insurance products. The subscriber could send their customer details of those products. The subscriber should make clear to the customer that the third party is a separate legal entity, and is not a division of the subscriber’s company, since this will not always be clear to the customer from the name of the third party. It is only if the customer chooses to respond

---

Subscribers have a six month transitional period to replace the Statement of Principles which references the Banking Code, with the updated version at Annex B, which references the Lending Code.
positively that the subsidiary will learn any details about the customer, or even that the customer has been sent the information in the first place.

26. Customers must be given the opportunity to opt out of receiving the subscriber’s marketing information. They should be reminded of this option at least once every three years.

27. Account opening forms (whether paper, internet-based, questions over the telephone, or other ‘welcome pack’ information) should contain a section or question to allow customers to signify that they do not wish to receive ‘marketing approaches.’ Examples of marketing approaches include literature through the post, e-mails and telephone calls. The types of approaches could be listed so the customer can object to some rather than all.

28. ‘Marketing approaches’ means information designed to sell additional products and services. This means that if there is a clear intention to sell a product or service which the customer does not already have it will be caught by this provision, however it is sent. However, the provision of information relating to product or service improvements or the availability of new channels (e.g. that the customer’s existing account(s) can be accessed via the internet) are excluded from this provision, as are changes to administrative details, such as new branch or telephone helpline opening hours.

29. As an illustration, advising a customer that they have free annual travel insurance with their credit card is not a marketing approach, whereas promoting an enhanced credit card to a standard credit cardholder is.

30. Subscribers should consider carefully whether the purpose of a customer communication is operational or promotional. Where ‘combined’ messages are used, a non-promotional version may be needed for customers who have opted out of receiving marketing material.

31. Express consent is not required to send this information, but customers must be given a clear opportunity to opt out of receiving it. Subscribers should, however, be aware (in the case of direct marketing telephone calls) of the Information Commissioner’s Guidance in relation to the Privacy and Electronic Communications (EU Directive) Regulations 2003.

32. It will not be sufficient to state only in terms and conditions that customers can opt out by writing to a particular address; however, provided it is clear and unambiguous, a notification can be included in, for example, an account opening pack. In addition, existing customers have to be reminded, at least once every three years, that they can opt out of receiving this information. This reminder could be by letter, e-mail, telephone or other method, such as being included in an annual mailing, provided it is sent personally to each customer and is clear. Whatever notification method is chosen, subscribers should ensure they are familiar with the various pieces of guidance issued by the Information Commissioner under the Data Protection Act 1998.

33. The three year notice can also be covered by subscribers adopting a more frequent approach, for example on all statements and/or marketing material.
Section 3: Credit reference agencies

34. When customers apply for a lending product, subscribers should tell them when they may pass the customer’s details to credit reference agencies (CRAs) and the checks that subscribers may make with them. For example, customers should be told if a record of the search is kept at the CRA and, if so, that this could impact the customer’s ability to obtain credit elsewhere within a short period of time.

35. Subscribers can give CRAs default information about a customer’s debts if:
   - the customer has fallen behind with their payments
   - the amount owed is not being disputed by the customer; and
   - the customer has not made a proposal that satisfies the subscriber for repaying the debt following the subscriber’s formal demand.

36. Whether or not notice was given by the subscriber and consent was obtained from the customer at the time the account was opened, disclosure of default information can be made. But, in all cases, the customer must be given further notice of the intention to disclose the information at least 28 days before the disclosure is made (for example, when a default notice or formal demand is given). At the same time, customers must be given an explanation about how default information registered against them may affect their ability to obtain credit in the future. This notice will mean that customers have 28 days to try to repay or come to some arrangement with the subscriber before default information is passed to the CRA.

37. For the purposes of the second bullet in paragraph 35, a customer dispute is relevant if it refers to the amount of money owed by the customer and is genuine, reasonable and unresolved. Further detail is provided in paragraph 43 of the ICO guidance referenced below.


39. With the customer’s permission, subscribers can share information about the day-to-day running of the customer’s account, including positive data, with CRAs where the firm has agreed to follow the industry’s Principles of Reciprocity. It is consistent with the legal position that any other disclosure to CRAs can be made only with the customer’s consent, usually by way of a declaration on an application form. The Information Commissioner accepts that such permission may be made a condition of borrowing.

40. The requirement to share data does not apply in specialist customer segments such as private banking where sharing CRA data is not always appropriate.

41. See also the Information Commissioner’s Guidance on the Data Protection Act 1998 which requires, in the absence of consent, one of eleven other conditions to be met. The ‘permission’ can be covered in a number of ways, for example, in terms and conditions, in an account opening pack, or it can be obtained at the time the disclosure is made. (Useful information can be found at www.ico.gov.uk)

42. If a customer asks, subscribers should tell them how to get a copy of the information that CRAs hold about them, or should give the customer one of their leaflets that explain how credit referencing works.
Section 4: Credit assessment

43. Before lending any money; granting or increasing an overdraft, or other borrowing, subscribers should assess whether the customer will be able to repay it.

Personal customers

44. For personal customers, this assessment should include consideration of information from CRAs plus at least one of the following three points:
   - The customer’s income and financial commitments.
   - How they have handled their finances in the past.
   - Internal credit scoring techniques.

   Additional useful considerations could include:
   - any security provided; and
   - why the customer wants to borrow the money and for how long.

45. Assessment may also include other checks that have not been listed above.

46. This requirement does not apply in specialist customer segments such as private banking where use of CRA data is not always appropriate.

47. Where income is one of the factors considered when assessing ability to repay a personal loan and the loan is agreed only if the income of another person is taken into account, normally the loan should be provided on a joint and several basis. However there may be circumstances when it is appropriate to provide a loan on a sole basis.

48. Subscribers should ensure they are familiar with the requirements of the Code Sponsors’ Guide to Credit Scoring and the explanations that need to be given to customers if credit scoring is used, and also the Information Commissioner’s Guidance on Credit Referencing.

Micro-enterprise customers

49. For micro-enterprise customers, this assessment may include looking at:
   - why the business wants to borrow the money
   - the business plan and accounts
   - the business’s cash flow, profitability and existing financial commitments
   - any personal financial commitments which may affect the business
   - how the customer has handled their finances in the past
   - information from credit reference agencies and, with the customer’s permission, others, such as other lenders and the customer’s landlord (where relevant)
   - credit-assessment techniques, such as credit scoring
   - any security provided.

50. Subscribers should also ensure that they follow the BBA Statement of Principles which sets out how banks should work together with micro-enterprises. The Statement is included as Annex B.

51. If the subscriber requires a micro-enterprise customer to hold a current account in order to get a loan the reasons for this should be explained to the customer before the loan application is completed.
Section 5: Current account overdrafts

Pre-sale information

52. When providing customers with information, before a contract is entered into, about a current account offering an overdraft facility, subscribers should include clear, fair and not misleading information outlining the availability of the overdraft, including whether there are qualifying criteria for accessing the overdraft.

53. The customer must be provided, where relevant, with details of the interest rate to be applied or, if reference interest rates are to be used, the method for calculating the actual interest and the relevant date and index or base for determining such reference interest rates.

54. This information must be provided either in good time, before the customer is bound by the contract; where the contract concludes at the payment service user’s request, using a means of distance communication, immediately after the conclusion of the contract.

Point of sale and post-sale information

55. If a customer is offered an overdraft, or an increase in their existing overdraft limit, subscribers should tell the customer if the overdraft is repayable on demand. The explanation could be contained in a facility letter or the terms and conditions.

56. If a customer's overdraft application is declined, the subscriber should explain the main reason why if asked by the customer. This could be provided in writing or electronically, if requested.

57. The written explanation could be given in the form of a leaflet if this is sufficiently focused. With regard to refusals based on credit scoring, the Code Sponsors’ Guide to Credit Scoring refers and can be found at: [http://www.bba.org.uk/bba/jsp/polopoly.jsp?d=135&a=6612](http://www.bba.org.uk/bba/jsp/polopoly.jsp?d=135&a=6612). Subscribers should have regard to the potential for financial crime in the information they provide and will want to avoid compromising their security procedures.

Interest rates

58. Subscribers should make information about overdraft interest rates available to customers via:

- a telephone helpline;
- a website;
- notices in branches; or
- information from staff.

59. If an overdraft is provided subscribers should give customers information on the interest rates which apply and when interest will be collected. If customers ask, subscribers should also give a full explanation of how interest is worked out.

60. Before taking interest, subscribers should give at least 14 days notice of how much will be taken.

61. Subscribers should inform customers about changes to the interest rates on their overdraft in compliance with the relevant regulatory requirement applying to the subscriber’s overdraft terms.

62. Within 3 working days of a rate change, notices should be put in branches and newspapers. To help compare rates, the old rate should also be included.

63. Where an overdraft interest rate tracks changes to an index rate, the requirement to inform customers of changes does not apply.
Charges

64. Subscribers should make available to customers information about any charges for overdrafts via:
   - a telephone helpline;
   - a website; or
   - by asking staff.

65. Subscribers should tell customers personally at least 30 days before increasing an overdraft charge or introducing a new overdraft charge.

66. Further guidance on charges information for current accounts, which are regulated under the Payment Services Regulations, can be found at: http://www.fsa.gov.uk/pubs/other/PSD_approach.pdf
Section 6: Credit cards

Pre-sale information

67. Information provided to customers should be clear, fair and not misleading. Subscribers should present information about the main features of a credit card in a summary box, as set out in The UK Cards Association best practice guidelines [http://www.theukcardsassociation.org.uk/best_practices/]

68. The summary box should be provided to the customer prior to their acceptance of the credit agreement.

69. All integral features of the product, such as introductory rates, should be included in the summary box. Information on free-standing or optional product features, such as Payment Protection Insurance, credit card cheques or other free-standing product features should not be shown in the summary box. Information on such free-standing features should be provided separately and should comply with any relevant best practice guidelines.

70. Pre-contract, the summary box should appear prominently on, or within, any application form/pack, acting as a final reminder for the consumer. This will typically cover direct mail pieces, free-standing leaflets, inserts etc. but not media such as television, radio, cinema or outdoor advertising.

71. For internet applications, a click-through to a page containing the summary box should be available.

72. Credit card issuers are not precluded from using the summary box in any advertising media they choose or at any point post-contract.

73. Subscribers should only send a credit card to a customer if they request one or to replace a credit card the customer already has.

Point of contract information

74. Before a customer enters into the contract for a credit card (and when they accept the product for the first time) they should be given information relating to the following:

- An explanation of how interest is calculated and charged; for example, whether it is charged on the full statement balance or only on any balance remaining after the customer has made the monthly payment;

- The PSRs require that the customer must be provided, where relevant, with details of the interest and exchange rates to be applied or, if reference interest and exchange rates are to be used, the method for calculating the actual interest and the relevant date and index or base for determining such reference interest or exchange rates;

- This information must be provided either in good time before the customer is bound by the contract, or where the contract is concluded at the payment service user’s request, using a means of distance communication, immediately after the conclusion of the contract;

- Details of how monthly payments are applied to any outstanding balance across transaction types including promotional offers;

- An explanation of recurring transactions;

- Details of charges for the day-to-day running of the account, including any annual fee, dormancy fee, charge for exceeding credit limit, charge for delayed monthly payment, charges for overseas transactions, cash withdrawal fees for card usage at an ATM or over the counter, fees for any cash equivalent transactions, balance transfer fees, returned payment fees due to insufficient funds, and any other applicable fees;

- The distinction between being the principal cardholder and an additional cardholder should be explained i.e., that the principal cardholder is responsible for all spending, including that by additional cardholders, and is responsible for repayments on the credit card;

- The interest rates applicable to different types of transactions (e.g., purchases, balance transfers, credit card cheque transactions and cash transactions) and the ways in which customers will be told about changes in interest rates; and

- Sufficient details to enable customers to pay on time, including via automated payments. Subscribers should also ensure that, where customers are offered the facility to pay by cheque by post, sufficient time is given to allow payments to be made in time, taking account of the postal delivery system and the length of the clearing cycle.
Chip and PIN

75. Subscribers should issue the customer’s PIN separately from their card.
76. Subscribers should have systems in place to allow customers to change their PIN and should tell customers how to do so, for example in account opening packs or on PIN notifications.
77. Subscribers should make reference to the availability of alternatives to chip and PIN in materials accompanying card issuance and in any discussion with the customer where they express difficulty with using a PIN.

Interest rates

78. Subscribers should make current credit card interest rates available to customers via one or more of the following:
   - a telephone helpline;
   - a website;
   - notices in branches; or
   - by asking staff.
79. Subscribers should inform customers about changes to the interest rates on their credit card in compliance with the relevant regulatory requirement applying to the subscriber's credit card terms.

Risk-based repricing

This section applies only to credit cards for personal customers where the interest rate is determined individually in accordance to the customer’s risk profile.

80. Subscribers should not increase the standard interest rate on a credit card within the first 12 months after the account is opened⁴. Subscribers should not increase the interest rate on a credit card more often than once every 6 months after its first year of operation.
81. If, after the first year of operation, a subscriber decides to reprice a customer’s credit card it should undertake the following procedures prior to any increase:
   - Give the customer at least 30 days advance notice of the increase in the interest rate;
   - Give the customer options which include closing the credit card account and repaying the balance at the existing interest rate, within a reasonable period;
   - Explain, if asked by the customer, why the interest rate is being increased; and
   - Consider offering an alternative product (if there is one available) at an equivalent or lower rate of interest.
82. Subscribers should not increase the interest rate on a credit card if the personal customer:
   - has failed to make two or more consecutive minimum monthly repayments;
   - has agreed a repayment plan for the account; or
   - is engaging with a not-for-profit debt agency to discuss a repayment plan and the issuer has been formally notified.
83. Further guidance on dealing with cases of financial difficulty is included in Section 9.

⁴ This requirement does not apply to an introductory promotional APR that reverts to a standard APR within the first 12 months
Credit card limits

84. Before giving a customer a credit limit, or increasing an existing limit, subscribers should assess whether they feel the customer will be able to repay it. Subscribers should follow The UK Cards Association best practice guidelines for credit card limit increases http://www.theukcardsassociation.org.uk/best_practices/

85. Subscribers should give customers notice if they increase the credit limit on their credit card and explain how customers can refuse the increase.

86. Customers can contact the subscriber to reduce their credit card limit or opt-out of the increase.

87. Customers can request an increase to their credit card limit. The request should be considered after subscribers have made appropriate checks.

88. Where an emergency increase to a credit card limit is granted (i.e., when a transaction goes for authorisation and will take the customer over their pre-agreed limit) the issuer should always assess the customer’s ability to repay.

89. Issuers should advise customers that checks are made before a limit is increased (the method and timing of advice will be at the issuer’s discretion).

90. Credit card limit increases should not be offered on accounts that are in arrears and should not be granted for accounts that fall below credit scoring thresholds.

91. Subscribers should periodically review customers’ credit card limits using credit reference agency and internal data. The requirement to use CRA data does not apply in specialist customer segments, such as private banking, where use of credit reference agency data is not always appropriate.

92. Where the subscriber feels it is appropriate, the credit card limit should be reduced and notification given to the customer.

Credit card promotional period

93. If a credit card has an introductory promotional rate the expiry date of the introductory promotional offer should be shown on the front of the statement or in a separate, prominent personal notification to the customer. This should be given between four and eight weeks before the offer expires.

94. It is acceptable to exceed the four or eight week period if the best way to provide information about the expiry of an introductory promotional rate is by a message in, or with, a monthly statement.

95. This requirement does not apply where the customer is in breach of the terms and conditions of the account and the subscriber is concerned that giving the customer warning that the promotional period is about to end may result in abuse of the card, or where the account is not being used and the customer is not receiving a monthly statement.

Credit card statements

96. Firms should provide customers with a monthly statement for their credit card unless the account has a zero balance and has not been used. The monthly statement will include information about transactions since the last statement date, any interest which applies, the minimum repayment and other useful information compliant with the Consumer Credit Act 2006, such as the allocation of payments.

97. Subscribers should follow The UK Cards Association Best Practice Guidelines for the Cardholder Statement Summary Box http://www.theukcardsassociation.org.uk/best_practices/

98. There are a number of specific pieces of information which should be included on every credit card statement (and where appropriate on a link from an electronic statement):

- Sufficient details to enable customers to pay on time, including via automated payments;
- The current interest rate should be printed on each statement. Also, if more than one interest rate applies to an outstanding balance (for example, where one rate applies to a transferred balance and different rates to new borrowing and cash transactions) this should be made clear;
- A clear statement that if the account is not fully cleared, interest will be charged on the total value of the statement, and not just on the outstanding balance;
- A clear statement that interest will be charged on a daily basis and that interest payments therefore increase the longer payment is delayed (even before the monthly payment date);
- A brief summary on the allocation of monthly payments on the front or back of the statement (or a link from an online statement);
- The front of each credit card statement should show a cash figure indicative of the amount of interest which would be payable by the customer if they paid the minimum amount and it reached the subscriber on the last day for payment;
- A warning about the risk of only making minimum payments – this should be worded as follows, 'If you make only the minimum payment each month, it will take you longer and cost you more to clear your balance.'

99. In addition, in the event that a customer has missed a payment, subscribers should also include in any notification sent to a customer in respect of missing the first payment reference to the option of paying by automated payment to avoid missing future payments.

Credit card repayments

100. Subscribers should ensure that the minimum monthly repayment covers more than that month’s interest. This means that the minimum repayment will cover that month’s interest and a proportion of the balance outstanding from the previous month.

101. The principle should be that the minimum repayment on a credit card should reduce month by month if there have been no further transactions on the card and the lower minimum payment threshold of the card has not been reached, assuming all other conditions of the product remain unchanged. The term ‘transactions’ includes any fees, charges or PPI premiums incurred on the card.

102. The minimum payment amount on the account should be clearly shown. This amount should normally be sufficient to avoid negative amortisation over a period of 12 months (i.e., the sum of 12 minimum payments would exceed the sum of additional interest added to the account over the same 12 month period).

103. It is acceptable for the minimum payment amount to be calculated as a percentage of the balance carried forward, so long as the percentage would normally prevent negative amortisation. Other methods for calculating the minimum payment are also acceptable, provided this principle can be demonstrated.

104. Subscribers may offer payment holidays and should clearly explain the terms and that customers can reject the holiday by continuing payment. Where a payment holiday is provided the minimum repayment afterwards should be sufficient to avoid negative amortisation over a period of 12 months from the start of the holiday.

Credit card cheques

105. Subscribers should follow The UK Cards Association best practice guidelines for credit card cheques including the provision of clear information through a summary box provided with all credit card cheques: http://www.theukcardsassociation.org.uk/best_practices/

106. New credit card customers should be given a first time opt-out from receiving credit card cheque mailings.

107. When credit card cheques are provided the customer should be given prominent information about how to opt out of receiving cheques and how to destroy unwanted credit card cheques and supporting material.

108. The following customers should not be issued credit card cheques:
- Customers who are in arrears or over-limit5;
- Customers with limited scope to borrow more or who are at their limit;
- Customers who have opted out of receiving cheques; and
- Accounts where there are fraudulent activities or lost/stolen procedures pending.

109. Subscribers should not send out unsolicited credit card cheques with a pre-completed amount.

5 This means customers who are in arrears with their payments or over-limit at the time of selection for receipt of credit card cheques.
110. In addition to the summary box, subscribers should clearly and transparently highlight in the main body of any communication accompanying the provision of credit card cheques the following (where applicable):

- Credit card cheques do not provide the same level of consumer protection as a normal credit card purchase;
- The transaction fee per cheque;
- Whether there is an interest free period;
- How to opt-out of receiving credit card cheques in the future; and
- An alert to the Summary Box (e.g. “see important information overleaf”)

Unauthorised transactions

111. If the subscriber agrees that a credit card transaction has genuinely not been authorised by the customer then any interest that may have been charged on this transaction will be refunded. Interest will not be refunded if the customer has acted fraudulently or with gross negligence.

112. Unless the subscriber can show that the customer acted fraudulently or with gross negligence, their liability for their credit card being misused will be limited as follows:

- If someone else uses the card, before the customer informs the subscriber that it has been lost or stolen or that someone else knows the PIN, the most the customer will have to pay is £50;
- If someone else uses the card details without the customer’s permission, and the card has not been lost or stolen, the customer will not have to pay anything;
- If someone else uses the card details without the customer’s permission for a transaction where the cardholder does not need to be present (for example, buying something over the internet), the customer will not have to pay anything; and
- If the card is used before the customer has received it, the customer will not have to pay anything.

113. The second bullet refers to fraudulent situations where, for example, a customer’s card has been cloned. Unless the customer has acted fraudulently or with gross negligence (which the subscriber must prove – see below), the customer is liable for a maximum of £50 in total (i.e. not for each transaction) before they give notification of loss, etc., if the card is out of their possession.

114. If card details are misused while the card is still in the customer’s possession (i.e., it has not been lost or stolen), the customer cannot be liable, unless they have acted fraudulently or with gross negligence. This would include misuse of card details in the case of distance transactions (this reflects the requirements of the EU Distance Selling Directive). Under the Consumer Credit Act 1974, if the card was used as a credit token, then the consideration of gross negligence is irrelevant.

115. This provision confirms that the burden of proof lies with the subscriber and not with the customer, so the subscriber will have to provide proof if necessary.
Section 7: Loans

Declining an application

116. If a customer’s loan application is declined, the subscriber should explain the main reason if asked by the customer. This could be provided in writing or electronically, if requested.

117. The written explanation could be given in the form of a leaflet if this is sufficiently focused. In regard to refusals based on credit scoring, the Code Sponsors’ Guide to Credit Scoring (in particular, section 6 of the Guide) refers. Subscribers should have regard to the potential for financial crime in the information they provide and will want to avoid compromising their security procedures.

118. If, after declining an application for credit, subscribers wish to refer a customer to another lender, they should make the customer aware that a referral is not an indication that a subsequent application for credit will be successful.

Guarantees for personal and micro-enterprise lending

119. Regular financial information about the person on whose behalf a guarantee/indemnity or other security is given should always be made available to the guarantor or grantees of third party security (‘granters’), so that they can assess the likelihood of being called upon to pay, as long as permission is given and confidentiality is not breached.

120. If the guarantor or grantee requests confidential financial information (with the exception of the current level of liability), such as details of balances, copy statements, etc, the customer’s consent should first be obtained.

121. It is important that guarantors or granters receive independent legal advice to help them understand the full nature of their commitment and the potential implications of their decision. Case law on this issue is well developed and subscribers should encourage, as far as possible, potential guarantors or granters to take independent advice. Subscribers may wish to go further than what is covered in this section and require a potential guarantor or grantor who refuses to take legal advice to sign a declaration to that effect. In any case, the recommendation to take independent legal advice, and the potential consequences of their decision, should be stated clearly on all appropriate documents that the guarantor or grantor is asked to sign.

122. In relation to guarantees/indemnities, subscribers must also inform guarantors or granters that, by giving the guarantee/indemnity or other third party security, they may have to pay instead of or as well as the customer. Subscribers must also tell the guarantor the extent of their liability, including the addition of interest and charges after demand has been made. When independent legal advice has been given, it may be assumed that the solicitor will have explained the nature of all monies and continuing security, if appropriate. Depending on the nature and structure of facilities, subscribers may choose to explain these features to those customers who have declined independent legal advice (and should always do so when requested by any guarantor).

123. Subscribers should not take an unlimited guarantee from an individual other than to support a customer’s liabilities under a merchant agreement. However, other forms of unlimited third party security may be taken from an individual, provided that the limit of the grantor’s liability is explained in a side letter. This is to avoid the need to take fresh security, with the associated expense and inconvenience to customers, each time a facility changes.

124. ‘Unlimited’ applies to the capital amount of the loan and excludes interest, charges and arrears etc. An explanation of this should be covered in the guarantee/indemnity or other security documents that the guarantor is asked to sign.

125. In the case of limited companies, which are part of the same group structure, subscribers may continue to take unlimited guarantees from the constituent companies in support of borrowing by other companies in the group.
Security for micro-enterprise lending

126. If a subscriber asks for security to support a business's borrowing or other liabilities it should tell the business why it needs the security and confirm what is needed in writing. Documents should be easy to understand and avoid technical language whenever possible. Micro-enterprise customers should have the opportunity to discuss with the subscriber anything about which they are unsure.

127. If asked by the customer, the subscriber should tell the customer under what circumstances they will agree to release the security. It should be made clear that the security will be released once the facility is repaid – unless contrary instructions are received from the customer (i.e. security should not be retained beyond the life of the borrowing without the customer’s express agreement).

The Statement of Principles for lending to micro-enterprises

128. Subscribers should ensure that they follow the BBA Statement of Principles\(^6\) when lending to micro-enterprises. The Statement is included at Annex B.

---

\(^6\) Subscribers have a six month transitional period to replace the Statement of Principles which references the Banking Code, with the updated version at Annex B, which references the Lending Code.
Section 8: Terms and conditions

129. Unless it is impracticable to do so, as in the case of products purchased by telephone, customers should be provided with any product terms and conditions - and be encouraged to read them - before they commit to purchasing the product.

130. All terms and conditions should be written in clear and intelligible language. They should be fair in substance and, when relating to personal lending, should reflect the requirements of the Unfair Terms in Consumer Contracts Regulations.

131. Terms and conditions supplied to customers in paper format should be easy to read by someone with normal or corrected eyesight.

132. Customers should be told how they will be notified of changes to terms and conditions when they become a customer.

133. Subscribers must not insist that a customer buys an insurance product from them as a condition of providing the customer with a lending product.

Changes to terms and conditions

134. If terms and conditions are changed to the customer’s detriment customers should be given at least 30 days personal notice (for example, by letter, e-mail, etc) before the change takes effect. At any time during the 60 days from the date of the notification, the customer must be free to close or switch their account without having to give notice. Customers should also be free to close or switch accounts without any financial penalty.

135. Where a change to terms and conditions is not to the customer’s disadvantage it can be made immediately. However, the customer should be notified of the change within 30 days. Notification can be made in a number of ways, for example: by press advertisements; branch notices; information on the website; etc. The method chosen should be appropriate for the distribution channel. So, for example, a branch notice would not be appropriate to advertise changes in the terms of an internet-only account.

136. If a firm makes a major change or a lot of minor changes to terms and conditions in any one year it should provide the customer with a summary of the changes and make available a full copy of the terms and conditions.
Section 9: Financial difficulties

137. Subscribers should be sympathetic and positive when considering a customer’s financial difficulties. Although there is an onus on customers to try to help themselves, the first step, when a subscriber becomes aware of a customer’s financial difficulties, should be to try to contact the customer to discuss the matter. This applies to both personal and micro-enterprise customers.

138. Personal customers should be considered to be in financial difficulty when income is insufficient to cover reasonable living expenses and meet financial commitments as they become due. This may result from a change in lifestyle, often accompanied by a fall in disposable income and/or increased expenditure, such as:

- loss of employment;
- disability;
- serious illness;
- relationship breakdown;
- death of a partner;
- starting a lower paid job;
- parental/carer leave;
- starting full-time education; and
- imprisonment

139. Financial difficulties may become evident to a subscriber from one or more of the following events:

- Items repeatedly being returned unpaid due to lack of available funds;
- Failing to meet loan repayments or other commitments;
- Discontinuation of regular credits;
- Notification of some form of insolvency or court proceedings;
- Regular requests for increased borrowing or repeated rescheduling of debts;
- Making frequent cash withdrawals on a credit card at a non-promotional rate of interest; and
- Repeatedly exceeding a credit card or overdraft limit without agreement.

140. Additionally, for micro-enterprise customers, financial difficulties may also become evident to subscribers because:

- the customer goes overdrawn without agreement;
- the customer goes over their agreed overdraft limit, especially more than once;
- there are large increases or decreases in the business’s turnover;
- the business is trading at a loss;
- the business suddenly loses a key customer or employee;
- a large part of the business is sold;
- a facility is used for purposes other than those agreed with the subscriber;
- the customer does not keep to conditions set out in the loan agreement;
- the customer does not supply agreed monitoring information on time; and
- another creditor brings a winding-up petition or other legal action against the business.
Proactive contact

141. If, during the course of a customer’s account operation, a subscriber becomes aware via their existing systems that the customer may be heading towards financial difficulties, the subscriber should contact the customer to outline their approach to financial difficulties and to encourage the customer to contact the subscriber if the customer is worried about their position. Subscribers should also provide signposts to sources of free, independent money advice.

142. Subscribers should determine the level of intervention required dependent on the individual customer’s position.

143. Subscribers should make available to customers straightforward information in plain English on their procedures and systems for dealing with customers in financial difficulty. This might explain, for example, the main rights and responsibilities of customers and subscribers, and what is involved in legal demands or a referral to a debt recovery unit. The BBA publishes a leaflet, *Dealing with Debt*, which is available on the BBA and UK Cards Association websites.

144. Where a customer requests that the subscriber deals with them in writing or e-mail (providing that facility is available) rather than by telephone, they should do so as long as the customer remains co-operative and in regular dialogue.

Specialist assistance

145. If it becomes clear to the subscriber that the customer needs specialist assistance, the customer should be referred promptly to a specialist team that deals with customers in financial difficulties, if one exists. In some cases, referral to a debt recovery unit may also be necessary.

Repayment plans

146. The subscriber should explore a range of options with the customer. Usually this will require the customer to disclose to the subscriber details of their income, expenditure, assets and liabilities, including amounts (if any) owed to other creditors. This information will be used to develop a plan for dealing with the liabilities. In cases where there are liabilities to multiple creditors, subscribers should recommend a free money advice service.

147. The initial arrangements for repaying the debt should be in writing or other durable medium. This will not always be treated as a formal debt management plan, and there may be departures from this plan, if it is in the interests of subscribers and customers. There is no need for every small departure from the basic plan to be in writing (for example an agreement to accept a lower repayment for one week), but any amendments that change the fundamental nature of the plan should be in writing. If, at the subscriber’s discretion, the plan includes an agreement to accept smaller repayments, the subscriber should tell the customer whether this is regarded as ‘falling behind with repayments’ and whether information will be passed to Credit Reference Agencies.

148. Repayment plans between subscribers and customers may be subject to regular review. Any review period will be agreed with the customer or their adviser, and subscribers should seek to revise contributions only at the end of the review period or if a customer’s personal circumstances change. (Customers and/or their advisers should inform the subscriber if the customer’s personal situation changes.)

Debt Collection Agencies

149. Subscribers should follow a due diligence process when selecting third parties for debt management, which should include third party compliance with data protection legislation, consumer credit legislation, Office of Fair Trading guidance on debt collection and debt management, and the code of the Credit Services Association.

150. Subscribers should use all reasonable endeavours to ensure that the Code standards for handling financial difficulties are applied by such agents. Code compliance standards should form part of all third party contracts.

151. Subscribers should pass on relevant information to enable the third party debt manager to recover the debt.

152. Subscribers should follow a due diligence process when selecting any third party for debt sale. Any new contract should ensure that the third party will comply with data protection legislation, consumer credit legislation, Office of Fair Trading guidance on debt collection and debt management, the code of the Credit Services Association and the Lending Code’s standards for handling financial difficulties even if the debt purchaser is not a subscriber. The subscriber will inform the third party of any relevant arrangements currently being complied with by the customer.

153. It is common practice for third parties taking on a debt to request a new statement of income, expenditure and assets to understand the customer’s most up-to-date position.
The Statement of Principles for Micro-enterprise customers

154. In addition to the general requirements above for dealing with financial difficulties, subscribers should ensure that for micro-enterprise customers in financial difficulty they follow the BBA Statement of Principles. The Statement is included as Annex B.

Additional provisions for personal customers in financial difficulty

Paragraphs 155 – 172 outline further requirements that subscribers should follow when relevant in dealing with personal customers in financial difficulty.

Consolidation loans

155. Where a consolidation loan is being provided to a personal customer and the subscriber considers the customer to be in financial difficulties, the subscriber should reduce or pay off the existing in-house borrowing that it is aware is being consolidated. This applies only where the existence of such in-house borrowing is apparent to subscribers via their existing in-house systems.

156. Exceptionally there may be circumstances in which it is appropriate not to reduce or pay off existing borrowing.

Breathing space for personal customers

157. Where a not-for-profit debt advice agency has formally notified a subscriber that the customer is in serious discussion with them on a draft debt repayment plan then the subscriber should suspend collections activity related to the customer’s current account, credit card and/or unsecured personal loan while these discussions continue, provided that they are concluded within 30 days.

158. In exceptional circumstances where discussions are progressing but have not been concluded within the initial 30 days the debt advice agency can ask the subscriber for an additional 30 days breathing space.

Communicating with personal customers and advisers

159. Communications with customers and/or their advisers should, wherever possible, acknowledge and reflect any previous discussions that have taken place. Subscribers should be willing to communicate with customers and/or their advisers by phone, post, secure email or fax. Normally, the subscriber will communicate through the adviser, if an authority has been received. This does not preclude subscribers from copying correspondence to customers if they choose. In certain circumstances it may be beneficial for discussions (either face-to-face or over the telephone) between the adviser and subscriber to take place with the customer present.

160. On occasions the subscriber may need to contact the customer directly, even when an authority is in place. These occasions may be the result of the adviser not being available, failing to provide requested information within a reasonable period of time, or other similar circumstances.

161. Subscribers should give a phone number on all communications that will put the customer in contact with a named person or a team dedicated to dealing with cases of financial difficulty.

Subscribers have a six month transitional period to replace the Statement of Principles which references the Banking Code, with the updated version at Annex B, which references the Lending Code.
Debt recovery procedures

162. If the customer does not co-operate with the subscriber, a plan cannot be developed and the subscriber may proceed with normal debt recovery procedures. Lack of co-operation would include not responding to the subscriber’s attempts at contact and unreasonable demands by the customer (for example, a request that the debt be written off or repaid over a very long period, even though the customer could afford to make reasonable repayments).

163. The subscriber should take into consideration any other accounts that the customer may have with the subscriber if these have a credit balance. In addition, if a customer has assets which could reasonably be expected to be sold to reduce outstanding debts, the subscriber may request that the customer, and if appropriate, their adviser, considers this option. Thereafter, the subscriber should acknowledge that income should only be used to repay ‘non-priority’ debts once provision has been made for any ‘priority’ debts. The subscriber should leave the customer with sufficient money for reasonable day-to-day expenses, taking into account individual circumstances. Subscribers will not subject customers to harassment or undue pressure when discussing their problems.

164. A debt is considered ‘priority’ where the customer’s failure to pay could lead directly to the loss of one or more of the following:
- The customer’s home (e.g., rent, mortgage, secured loans);
- The customer’s liberty (e.g., council tax, child support maintenance, income tax, court fines);
- The customer’s utility supplies (e.g., water, gas, electricity); or
- The customer’s essential goods or services (e.g., a cooker, a fridge, or the means to travel to work).

Token offers and write offs

165. Token offers may be accepted where the customer has demonstrated they have no surplus income available for their ‘non-priority’ creditors and there is a realistic prospect of the customer’s circumstances improving. A token offer will not necessarily be sufficient to prevent the subscriber from selling the debt to a third party debt recovery agent and to prevent the debt from being registered as a default with the credit reference agencies.

166. Where the subscriber considers the customer’s personal and financial circumstances to be exceptional and unlikely to improve, the subscriber may, among other options, consider writing off or not pursuing part or all of the customer’s debt(s). Where write-off is requested by a customer or adviser but is not considered appropriate by the subscriber, the subscriber must give their reasons in writing. If the subscriber agrees to a write-off, then the debt may be registered as a default with the credit reference agencies.

Common Financial Statement

167. If a customer works with a debt-counselling organisation to complete a Common Financial Statement (CFS), the subscriber should accept the CFS as the basis for negotiations with the customer to draw up a debt management plan.

168. This provision is designed to help people in financial difficulties, and some subscribers may only apply it when accounts have gone into default. Other subscribers may choose to use the provision at an earlier stage if it benefits both them and the customer.

169. Money advisers will use the BBA/MAT/FLA Common Financial Statement format and principles when submitting information to subscribers.

170. Subscribers should accept the CFS (and other similar statements such as that used by the Consumer Credit Counselling Service (CCCS)). The CFS - or equivalent details of the customer's income, expenditure and assets - is necessary to enable the subscriber to gather information to assess if an ‘offer to pay’ will enable the customer to be accepted onto a formal debt management plan (DMP), or enable the subscriber to reduce or suppress interest and fees.

171. The third party money adviser should ensure that their authority to act on behalf of the customer is promptly sent to all creditors identified by the customer. It is also the responsibility of the adviser to ensure that a CFS or equivalent is sent to the creditors shortly after the authority. In these circumstances, where a money adviser has been appointed

8 More information on the BBA/MAT/FLA statement is available from the British Bankers’ Association or money Advice Trust as well as the agencies supported by MAT, e.g., the National Associations of Citizens Advice Bureaux Service, Advice UK, Money Advice Association, Money Advice Scotland, and National Debtline.
and there are debts with many creditors subscribers will not normally be able to work with the customer until a CFS or equivalent has been received.

172. In general, subscribers should then be prepared to accept an offer of repayment which is based on the principle of equitable distribution of available income (after priority payments), in line with the amount outstanding to each creditor. Alternative means of calculating the distribution of available income by the customer or their adviser may be agreed on a case-by-case basis. A subscriber may accept an offer of payment, even though the offer is not sufficient to enable the customer to be accepted onto a formal DMP.

Debt and mental health

This section of guidance is relevant to both personal and micro-enterprise customers.

173. The impacts of financial difficulty can be especially acute for customers with mental health problems. Subscribers should consider their processes and systems to ensure that they can be responsive to a customer in financial difficulties, from the point at which they are made aware of a mental health problem.

174. The appropriate response will differ in each case and could involve a range of approaches, including:

- working positively with an advice agency
- promptly carrying out agreed actions
- being flexible in responding to offers or schedules of repayment
- sensitively managing communications with the customer (for example preventing unnecessary and unwelcome mailings).

175. Where it is appropriate and with a customer’s consent, subscribers should work with advice agencies and health and social care professionals in a joined-up way to exchange information and ensure an effective dialogue.

176. With a customer’s explicit consent and in line with requirements of the Data Protection Act, where it is possible and appropriate subscribers should record relevant information about the customer on their account so that staff can deal appropriately with the customer.

177. If a subscriber has specialist staff to deal with cases of debt and mental health problems, they should ensure that appropriate mechanisms exist to refer the customer to the appropriate support.

178. If a customer informs a subscriber that they have a mental health problem that is impacting on their ability to manage their financial difficulties, the subscriber should allow the customer a reasonable period (e.g. 28 days) of time to collect and submit relevant evidence to the subscriber. This evidence will help the subscriber to work with the customer, advice agencies and health/social professionals where appropriate to determine the most appropriate action to deal with the customer’s financial difficulties.

179. The Money Advice Liaison Group (MALG) has produced a Debt and Mental Health Evidence Form (DMHEF) which provides a standardised methodology for advisors and creditors to share relevant information about the customer’s condition from health and social care professionals.

180. Subscribers are encouraged to consider the DMHEF if it is presented by the customer or their adviser (with the customer’s consent).

181. If a subscriber has received appropriate and relevant evidence of a customer’s mental health problems they should consider whether it is appropriate to pass or sell the customer’s debt to a third party debt collection agency.

182. The subscriber should also only initiate court action to pursue the debt as a last resort and when it is appropriate and fair to do so.

183. Further and more detailed good practice guidelines have been produced by MALG and are available at: http://www.moneyadvicetrust.org/download.asp. The MALG guidelines will not be monitored and enforced by the Lending Standards Board.

---

9 The DMHEF and relevant guidance can be found at http://www.moneyadvicetrust.org/section.asp?sid=12
Section 10: Complaints

184. In line with the FSA DISP Rules, all subscribers should have a set of internal procedures for handling complaints, and staff dealing with customers should know what these are so that customers can be informed if the need arises. Procedures should be clear and well defined.

185. On entering a contract, customers should be informed about where they can find details of the subscriber’s complaints handling procedures.

186. Details of the internal complaints procedures should be given to customers who wish to make a complaint.

187. If a subscriber is unable to resolve a complaint to the customer’s satisfaction by the close of business on the day following receipt of the complaint, the subscriber should provide a prompt written acknowledgement that the complaint is being considered.

188. Customers should be kept informed about the subscriber’s progress in dealing with the complaint and within eight weeks should receive a final response or an explanation as to why a final response has not yet been reached. The Customer should also be informed that they can refer their complaint to the Financial Ombudsman Service (where applicable) and how to do so.

189. Enforcement of compliance with these requirements is the FSA’s responsibility.

Section 11: Monitoring

190. Subscribers should appoint a Code Compliance Officer who is likely to be the contact person for co-ordinating the annual statement of compliance, compliance visits and other contact with the Lending Standards Board.

191. Further details about the Lending Standards Board can be found at www.lendingstandardsboard.org.uk.
Annex A: Unsecured personal loan(s) – summary box

When pre-sale information that includes any of paragraphs 5-7 of Schedule 2 of the Consumer Credit Advertisements Regulations 2004 is presented to customers in a written and/or online format, it should be available in a standard summary box. This applies to unsecured loans but not to sales finance, overdrafts or credit cards.

This requirement does not apply to Schedule 2 information contained in pre-contract information because this is prescribed by the Consumer Credit (Disclosure of Information) Regulations 2004 and the Financial Service (Distance Marketing) Regulations 2004.

A summary box does not have to be available in specialist customer segments such as private banking where its use may not be appropriate.

The content and order of the summary box is outlined below and should be relevant to the features of the financial promotion to which it relates.

<table>
<thead>
<tr>
<th>APR</th>
<th>If priced by risk:-</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Typical x.x % APR</td>
</tr>
<tr>
<td></td>
<td>If successful, the interest rate you will pay is based on your personal circumstances, [the time period over which the loan is repaid] and [the amount you choose to borrow].</td>
</tr>
<tr>
<td></td>
<td>Or, if not priced by risk:-</td>
</tr>
<tr>
<td></td>
<td>Typical x.x % APR</td>
</tr>
<tr>
<td></td>
<td>If successful, the interest rate you will pay is based on the amount you choose to borrow, [and the time period over which the loan is repaid].</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Interest rate ranges</th>
<th>Loan size range</th>
<th>From %</th>
<th>To %</th>
<th>Representative APR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£5000 – 7500</td>
<td>17.3</td>
<td>19.9</td>
<td>18.0</td>
</tr>
<tr>
<td></td>
<td>£7501 - 10000</td>
<td>14.9</td>
<td>18.9</td>
<td>16.0</td>
</tr>
</tbody>
</table>

(To include sufficient information for the consumer to see the interest rates / ranges for all the loan size bands / tiers used in the financial promotion. If price is affected by the repayment period the From % and To % should fully reflect this.)
### Interest charging information
To include:
- Is rate fixed for life of loan?
- Basis of interest calculation: (daily/monthly/annual balance; in arrears/advance)

### Repayment information
To include:
- Method and frequency of repayment
- Date when first repayment is due
- Are payment holidays permitted?
- Is deferral of payments permitted at start of loan?

### Repayment period
To include the range of time periods over which a loan can be repaid

### Amount of loan available
To include the range of £ amounts for which loans are available and applicable increments

### Application/Arrangement fee
To include the £ amount of any set up fees, whatever they may be called.

### Other fees
To include any optional fees, such as “fast delivery” costs, “payment date change fees” & “fees for paying by credit card”

### Default fees
To include a list of all default charges applied by the loan provider, their £ costs, and any rules about when charged. “Default” to be defined so customer knows when applicable.

If none are charged then show: “none”.

(Examples might include: returned item charges for unpaid standing orders / direct debits.)

### Early settlement
To include details of any early settlement fees

### Illustrative example

<table>
<thead>
<tr>
<th>Loan amount</th>
<th>APR</th>
<th>Term</th>
<th>Monthly</th>
<th>Total payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>£3000</td>
<td>X%</td>
<td>36 months</td>
<td>£x</td>
<td>£xx</td>
</tr>
<tr>
<td>£5000</td>
<td>X%</td>
<td>36 months</td>
<td>£x</td>
<td>£xx</td>
</tr>
<tr>
<td>£10000</td>
<td>X%</td>
<td>60 months</td>
<td>£x</td>
<td>£xx</td>
</tr>
</tbody>
</table>

The example loan amounts and terms above should be used when they are relevant to the loan bands for the financial promotion. If the example loan amounts above are not relevant they should be replaced by three relevant example loan amounts.

The example loan terms used should be 36 months for amounts under £10,000 and 60 months for £10,000 and above. However, different illustrative examples may be provided if the financial promotion is for a loan product that does not allow either of the example loan terms.
Presentation should be clear and legible and in compliance with the Consumer Credit Advertising Regulations. The summary box can include key product information for more than one of the subscriber’s unsecured loan products, but information for each product should be presented in an individual column.

Subscribers are encouraged to use the standardised wording shown above, where applicable.

**Left hand column**

The sequence of information presented in the left hand column should be the same for each product and in the order outlined above.

**Right hand column**

This text provides examples of the types of information that should be presented for each key product feature, but these examples are not prescriptive or exhaustive. Subscribers should ensure that information relevant to the key product feature (left hand column) is included in the right hand column. Subscribers are not required to include information in the right hand column on features that the product does not include e.g. ‘Not applicable’ can be inserted. Subscribers should ensure that they are compliant with customer information requirements under relevant consumer credit legislation.

**APR**

Subscribers need only show whichever of the two suggested examples is relevant to the way the product is priced.

Subscribers are encouraged to include whichever of the variables included in the example summary box above is relevant to the way the product is priced i.e. personal circumstances; time period over which the loan is repaid; the amount you choose to borrow.

**Interest rate ranges**

The ranges should be based on the price bands used in the financial promotion. In the example above, the financial promotion is for loans of £5000 to £10,000.

If the interest rate will be affected by the repayment period this should be articulated.

**Interest charging information**

An example of the way in which this information could be presented is:

> Once agreed, the APR is fixed and guaranteed for the life of your loan. The interest, at the agreed rate, will be calculated on the amount of loan outstanding each day and debited from your account monthly in arrears.

**Other fees**

This should include any fees that can be incurred by the customer which are not outlined in other sections of the summary box. Information should include whether fees are added to the loan; paid monthly; paid in advance/arrears; interest bearing etc.
Illustrative example

Subscribers should include three examples to allow customers to see the potential costs of repaying these loans.

The interest rate used should be the rate at or below which 66% of loans of this amount and length are priced, or the actual rate for such loans if not priced by risk.

Any additional product information which the subscriber feels should be given to the customer may be presented in close proximity to, but not within, the summary box.

Usage

The summary box should appear prominently on or within pre-sale material where any Schedule 2 paragraphs 5-7 information is triggered.

This will typically cover direct mail pieces: free standing leaflets; marketing inserts, etc. A summary box is not required for personal quotations requested by the customer or in media such as newspapers, posters, television, radio, cinema and outdoor advertising, although subscribers can choose to provide the summary box in these and other additional circumstances.

For promotions via the internet that include any of paragraphs 5-7 of Schedule 2, a link to the subscribers’ webpage containing the summary box should be available.

 Provision of a summary box is not required where the subscriber is providing the customer with presale information in an oral form e.g. via telephone.
Annex B: Statement of Principles

The Statement of Principles is available in leaflet form, but we have reproduced the copy here for convenience. Subscribers have a six month transitional period to replace the old Statement of Principles, which references the Banking Code, with the updated version below (which references the Lending Code).

A Statement of Principles: Banks and micro-enterprises – working together

Foreword

The original Statement of Principles came into force on 1 July 1997, having been drafted after the recession in the early 90s when many lessons were learned. In light of the current economic climate, the Principles have been reviewed by all key stakeholders to ensure that they continue to show real commitment from banks and highlight the responsibilities of micro-enterprises.

The Principles show how banks will work with micro-enterprises to get the relationship right from the start and help if the business gets into difficulties. They set out the industry’s best practice, showing business customers what they can expect from their bank and, in return, what they can do to build a strong relationship with their bank.

The Principles show that banks are committed to working with business customers to find ways of overcoming the difficulties they may face in changing markets and through the economic cycle. All businesses experience these challenges. The Principles also emphasise that if the owners and managers of the business take early advice and action, they can work with the bank to sort out difficulties.

All our major banks have skilled specialists to deal with customers in difficulties. They will be involved in the small number of cases when, despite everyone’s efforts, a business is failing. The industry and its customers are well aware that good managers and responsible banks are beneficial to everyone concerned, directly benefiting not only most of the businesses that succeed but also the wider community. Professional advisers and business support organisations have an important role to play in building trusted relationships between businesses and banks.

Overview

The Statement of Principles defines how banks will work together with their micro-enterprise customers when they need finance for the first time, and later as their needs change. The Principles show how banks will work with micro-enterprise customers to get the relationship right from the start and help if the business gets into difficulties, and how businesses can work most effectively with their bank.

The Statement of Principles is followed by banks that subscribe to the Lending Code and provide micro-enterprise lending. The Lending Code sets out how banks will deal with customers in the UK. It includes banks’ responsibilities involving:

- Credit assessment
- business loans and overdrafts
- credit cards
- charges and interest rates
- financial difficulties.

All relevant banks that subscribe to the Lending Code will ensure that every appropriate member of their staff receives a copy of this Statement. Copies of the Statement will also be given to all micro-enterprise customers and are freely available in bank branches. The Lending Code is freely available online at www.bba.org.uk

The Principles cover:

* A micro-enterprise is defined as a business that employs fewer than 10 persons and has a turnover or annual balance sheet that does not exceed €2 million. Further information about this definition can be found on the EU Commission’s website at http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm
1. Getting things right at the start

2. Sharing concerns

3. Agreeing the way forward

4. Making a complaint

5.Switching your current account to another bank.

Introduction

The relationship between a bank and a customer is a partnership. It needs careful thought and openness on both sides from the start, and particularly in difficult times.

Micro-enterprises are important to banks because they represent a significant proportion of their customers and use a wide range of bank services. If a customer does get into difficulties and its bank becomes aware, the bank will discuss with the customer the advice and action that may be necessary. In most cases, this should allow the bank and customer to agree the terms of the bank’s support and to return to running the business successfully. However, if the customer does not ask for or act on advice, or take part in meaningful discussions, the bank may have to take action to protect its own position.

The Principles set out, in general terms, how the customer and bank can tackle financial difficulties in a positive way. Many factors can contribute to this but the single most important step is for customers to speak to their bank at the earliest opportunity, take appropriate advice and act as soon as something goes wrong. Banks will contact micro-enterprise customers as soon as they know of difficulties and will offer to discuss these personally with the customer.

A meaningful business plan is often the basis for successful discussions, both at the start and if things begin to go wrong. When a bank tells a customer about its concerns, it will be as relevant and specific as possible, because that will help the customer to work with the bank to sort them out.

It is in the interests of both the bank and the customer to address concerns as soon as possible and agree a way forward. Sometimes, only selling the business or changing management can save the main business and save jobs for the benefit of the whole community. Where the business is not viable as structured, formal insolvency procedures may have to be considered to restructure or wind down the business. It is not in anyone’s interests for banks to continue to support businesses that cannot survive. The Enterprise Act 2002 recognises this and banks will work with management to use the best legal framework to achieve a fair outcome.

Banks will continue to reinforce these Principles within their own systems and publications, and make sure that all relevant staff within their organisations understand and apply them. The Lending Standards Board (LSB) independently monitors banks’ compliance with the Lending Code, including a commitment to follow the Statement of Principles. The LSB will monitor banks’ application of this Statement in their operational procedures; including ensuring relevant staff receive a copy of the Statement and providing the Principles to new and existing customers.

In the following Principles, ‘we’ means the banks agreeing to follow these Principles, and ‘you’ means the micro-enterprise customers of those banks.
The Principles

1 Getting things right at the start

   a We will confirm the conditions of any facility (borrowing, guarantees, bonds and so on) in writing.

We will make sure that the documents detailing the facility are easy to understand, using technical language only when necessary. We will be happy to explain anything you are not sure about.

It is important that you read the documents carefully. Please feel free to ask questions and get independent advice.

The documents legally bind both of us. If you are asked, you should only sign them if you fully understand what you are doing. They will normally include:

   • the amount and purpose of the facility
   • whether the facility is for a particular period or whether you will have to repay it when asked
   • when any repayments are to be made and the amount of those repayments
   • the interest rate and any other charges for the facility, and whether these are variable
   • when we will normally review the facility with you
   • the existing or new security and guarantees, including any minimum values to be maintained
   • what sort of circumstances will lead to an earlier review or require repayment
   • the information you will need to give us before you can use the facility
   • what action we might take if you fail to meet repayments

If the documents do not fully reflect any aspect of the negotiated agreement, discuss this with us before signing. Although banks always commit to first consider business assets before determining whether personal assets are appropriate, if you are providing personal security make sure that you and anybody else giving security understand the documents. Anyone providing security is also encouraged to get independent legal advice.

   b We will recommend that you get independent advice before accepting the facility.

The documents relating to your facility are important and form the agreement between us. Independent advice can help you to make an informed choice about the facility and understand the risks and responsibilities involved.

You can get legal advice from solicitors. Other sources of advice include accountants, Business Link, Business Gateway Scotland, Highlands and Islands Enterprise Scotland, Flexible Support for Business in Wales and Invest Northern Ireland. If you want, we can give you details of where you can get advice locally.

Whoever you choose to get advice from, you will be responsible for the costs involved. We will be happy to discuss any issues with your adviser if you ask us to.

A list of useful contact details is included at the end of this publication.

   c We will co-operate with your advisers to explain the facility and to clarify anything during the relationship.

You are free to involve your advisers in discussions with us. You may need to give us specific permission to talk to them if you will not be present. Advisers can help both you and the bank to fully understand each other’s position.

   d Before you accept the facility, we will agree with you what sort of monitoring information we need and how often we need it.

We will need to see information that tells us how your business is performing. You need to know how your business is running and should be able to show us that you are keeping on top of developments.

We will write to you setting out what information is required by us and when. This is for the benefit of both of us and to avoid the possibility of future misunderstandings. What is appropriate will vary from case to case and we will make our needs clear. We believe best business practice includes a business plan and performance monitoring. We anticipate that you will have already produced what we ask you for, to help you run your business. It is not our aim to add unnecessary costs and burdens and we will limit these where possible. Examples of what we might need are:
- a comparison of the forecasts in your business plan, with actual results
- progress on important aspects of the business plan, such as contract renewals
- revised cash-flow forecasts
- major capital spending proposals
- annual accounts and regular management accounts
- details of how much you owe creditors, and are owed by debtors, and for how long these have been due
- proof that you are meeting any special conditions we and you have agreed.

If your circumstances change, we will talk to you about any new information we will need from you.

e If we are not able to offer you a facility we will explain the key reasons why, if you ask us to.

There may be occasions when we are not able to offer you a facility. If this is the case, we will give you the key reasons why in writing if you ask us to and in person if you wish (unless we cannot do so for legal reasons).

2 Sharing concerns

a You should discuss any concerns you have about your current or future business performance with us as soon as possible. We will consider any financial difficulties you have sympathetically and positively and, if we have concerns about your business or our relationship with you, we will let you know in writing and offer to discuss these with you personally.

You manage the business and should be the first to realise that problems are developing. You should talk to us as soon as possible about your concerns and your plans. In addition, we will use our wide experience and account monitoring systems to try to spot problems before they become obvious. If we do so we will contact you to discuss possible actions.

Although these discussions may be difficult, we will be constructive and positive. Speaking to the bank about financial difficulties at your earliest opportunity will, in many cases, help us to agree terms of the bank’s support and return to running the business successfully. Not telling us about problems is likely to lead to unnecessary or serious difficulties. Occasionally we may need to contact you urgently, and we may do so by phone if possible, or by fax or e-mail.

This list gives a few examples of what can cause us concern, particularly if you do not explain what is happening.

- If you go overdrawn without our agreement.
- If you go over your agreed overdraft limit, especially more than once.
- If there are large increases or decreases in turnover.
- If you are trading at a loss.
- If you suddenly lose a key customer, contract or employee.
- If you restructure your business through reorganisation, acquisition or sale.
- If you use a facility for purposes other than agreed with us.
- If you fail to make a loan repayment.
- If you do not keep to conditions set out in the facility letter or loan agreement.
- If you do not supply agreed monitoring information on time.
- If another creditor commences legal action against your business.

You may want to get independent advice when you become aware of problems. We will remind you of the benefits of getting independent advice when we contact you to tell you our concerns about your business or our relationship with you.

b We may ask you for more financial information to help us work together to understand any problems.

Financial information will help us to analyse the problems and understand your business’ needs and the main factors which affect its ability to remain viable and successful. It is often an advantage to have someone outside the business help you to decide how your business should proceed.

If you have told us about problems at an early stage, there will be time to discuss and agree on any actions that need to be taken.
c We may suggest an independent review of your business.

If we suggest that an independent review should be carried out, we will explain the reasons why, what we think should be done and will discuss with you how the review will take place, who should carry out the review and the costs you will have to pay.

A review will be valuable to both of us as it will provide an independent view of the future prospects of the business. Someone with experience of these situations will be able to carry out the review fairly.

The review will usually cover all the options, including assessing:

- opportunities for improving cash flow and profitability
- the main business activities or new markets
- investment needs and refinancing options
- recommendations for the future.

3 Agreeing the way forward

a If your business is reviewed, we will discuss with you (and your advisers) the information provided before reaching any conclusions or taking any action.

We would expect the reviewer to have discussed the report with you before sending it to us. Discussions with us should give you a further opportunity to highlight any facts or opinions in the report that you disagree with. It is important that we both consider all the available information and all the options. We will take account of any other independent advice that you have received.

If we agree on a way forward, you will need to prepare a new business plan to put that strategy into practice and to agree any new facilities. Sometimes the reviewer may be responsible for preparing, testing and monitoring this plan.

If we cannot reach an agreement, we will make it clear why we feel unable to continue to support you. We will tell you when we will withdraw our support and will communicate these changes personally.

b We will support a rescue plan, if we believe it will succeed.

The key for both of us is to find a way forward that provides a lasting solution to the real problems and not just a quick fix. We will discuss with you the elements of the rescue plan and how it will achieve this aim. A successful rescue plan may involve changes to the business and its management, as well as changes to your facilities with us and we would expect you and others involved in running the business to view these changes positively.

A rescue plan usually involves providing extra time, security and investment. A bank is unlikely to increase its risk as part of the arrangements, so you may need extra security if we agree extra lending, although we will always look at business assets for security first. It is possible that the cost of your borrowing may increase - if so, we will explain the reasons why.

c If we do not think that the rescue plan will succeed, we will explain the reasons why and help you and your advisers to consider other options.

In most cases, by continuing to work together, we will find an acceptable alternative way forward. If we cannot support your plan, we will discuss the possibility of giving you time to find other bankers.

In serious situations, the way forward may involve an insolvency process.

To protect businesses (directors and owners) experiencing financial difficulty, there is a range of insolvency procedures, including voluntary arrangements, administration and administrative receivership (but see paragraph 3e, below).

All these procedures can allow the business to be restructured. If a restructure or a sale is not possible, we will help achieve an orderly wind-down using the most appropriate insolvency route. This is in the interests of all stakeholders, including directors and owners whose responsibilities are clearly recognised in law.

If you want any information or advice about insolvency procedures, you should contact the Insolvency Service or a licensed insolvency practitioner.

d If you make the changes agreed between us early enough to save the main business, we will not, other than in exceptional circumstances, start action to recover the amount you have borrowed.
Throughout the rescue plan, we will continue to work positively with you to support a lasting solution for a successful running of the business. To help us do this, it is important that you:

- act in good faith
- keep us informed about developments
- keep to your agreements with us
- carefully consider what your own and any independent advisers say
- are prepared to make the necessary changes early enough.

If we find, for example, that you have withheld important information or done something which affects the security we hold, we may have to start recovery action. This action may include appointing an administrative receiver (receiver in Scotland) or an administrator (if a company is involved), and will depend on the type of security we hold.

A final decision not to continue to provide support is made at a senior level in the bank, on the recommendation of the relationship manager. We will explain the decision to you and provide a written explanation if you ask us to, unless we cannot do so for legal reasons.

**e If, after reviewing all the options with you, appointing an administrator or an administrative receiver (receiver in Scotland) is considered to be the most appropriate action to take, the decision to appoint the receiver will be confirmed within the bank at a senior level.**

The decision to appoint an administrator or receiver (either by the directors or us) is often taken in the light of a recommendation from an independent accountant who has knowledge of the business.

In most cases, the directors invite the bank to appoint an administrator or administrative receiver after accepting that it is the most appropriate insolvency process based on very careful consideration of all the options available to protect the interests of the business, including the employees and creditors.

Insolvency practitioners will decide whether to accept a formal appointment after considering guidance on ethical standards. As a result of the Enterprise Act, an administrative receiver can only be appointed under security taken before 15 September 2003.

If you give us good reasons why a member of the firm that has carried out an independent review should not be appointed as administrator, we will appoint a different administrator (unless there are exceptional circumstances). The same principle applies for administrative receivers and receivers in Scotland.

### 4 Making a complaint

**a We have procedures to help sort out complaints and disagreements. We will act fairly and reasonably, and try to sort out problems quickly.**

We recognise that disagreements need to be dealt with quickly. Each bank’s procedures include your right to appeal to a higher authority in the bank if you feel that you have not been dealt with properly.

We will communicate with you using plain language, and you are free to ask questions if you do not understand the complaints process or anything we are telling you.

You are free to include your independent advisers in any discussions with us and we will talk directly to them if you authorise us to do so.

Further information about our complaints process is available in branches or online.

**b You can complain to the Financial Ombudsman Service if you are not happy with something we have done (or failed to do) and we are not able to sort out the problem to your satisfaction.**

The Financial Ombudsman Service is available to micro-enterprise businesses i.e. a business that employs fewer than 10 persons and has a turnover or annual balance sheet that does not exceed €2 million.

To complain to the Ombudsman you must have received a final response from us (or have waited more than eight weeks for a final response).
If you are still not happy, you should fill in a complaint form and send it to the service. We will give you details of the service, or you may contact the Financial Ombudsman Service direct (www.financialombudsman.org.uk).

5 Switching your account to another bank

a If you decide to move your current account to another bank, we will give them information on your standing orders and direct debits within three working days of receiving their request to do this.

We realise that if you are not happy with the service we give you, you might want to move your current account to another bank. Therefore, if asked by the new bank, we will send, within three working days, all the information necessary to transfer your direct debits and standing orders.

b In the absence of exceptional circumstances relating to the transfer of charges or securities, the lenders will complete the transfer of accounts within five working days, when timely information is provided by the customer.

Once your application for a new account has been successfully completed and the old and new bank have swapped information on your direct debits and standing orders, both banks will ensure that, unless there are exceptional circumstances relating to the transfer of charges or securities, the transfer of your account will be complete in five working days.

Useful contacts

For businesses that experience difficulties with their banks at branch level, banks have provided a central point of contact to discuss your concerns. Details of each bank’s central telephone number are available on the bank’s website.

If you are in difficulties, you can also get help from debt-counselling and business support organisations. We will tell you where you can get advice, some of which may be free. If you ask us to, we will work with your advisers. The contact details for some organisations which may be able to help are as follows.

Advice UK - 020 7469 5700 (www.adviceuk.org.uk)
Business Debtline – 0800 197 6026 (www.bdl.org.uk)
Business Link – 0845 600 9 006 (www.businesslink.gov.uk)
Citizens Advice - You can get the phone number of your local bureau from the phone book, the local library or www.citizensadvice.org.uk
Citizens Advice Scotland - 0131 550 1000 (www.cas.org.uk)
Federation of Small Businesses - http://www.fsb.org.uk
Financial Services Authority – 020 7066 1000 (www.fsa.gov.uk)
Money Advice Scotland - 0141 572 0237 (www.moneyadvice/scotland.org.uk)
National Federation of Enterprise Agencies - 01234 831623 (www.nfea.com)
Northern Ireland Citizens Advice Bureau - 028 9023 1120 (www.citizensadvice.co.uk)
The British Chambers of Commerce – 024 7669 4484 (www.chamberonline.co.uk)
The Insolvency Service - 0845 601 3546 (www.insolvency.gov.uk)
The Forum of Private Business – 0845 612 6266 (www.fpb.co.uk)
The Institute of Directors 020 7766 8866 (www.iod.com)
<table>
<thead>
<tr>
<th>Report paragraph</th>
<th>Code Section</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>A Glossary of Terms should be added to the Code</td>
</tr>
<tr>
<td><strong>Introduction</strong></td>
<td></td>
<td>Correspondence from subscribers to customers should be in plain language</td>
</tr>
<tr>
<td>2</td>
<td>3 1</td>
<td>The following wording should be added: ‘As a voluntary code, it allows competition and market forces to work to encourage higher standards for the benefit of customers.’</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>Code standards should comply with relevant legislation, in particular the 2010 Regulations implementing the Consumer Credit Directive</td>
</tr>
<tr>
<td>4</td>
<td>5</td>
<td>Customer facing documents setting out the key provisions in the Code should be produced for personal and micro-enterprise customers and their availability covered in the Introduction to the Code</td>
</tr>
<tr>
<td><strong>Key commitments</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>Key commitment 2 to be reworded to say: ‘Consumers are provided with clear information and are kept informed <strong>before, during</strong> and <strong>after</strong> the point of sale’</td>
</tr>
<tr>
<td>6</td>
<td>7  &amp; 66</td>
<td>Examples of “sympathetic and positive” behaviours that customers are entitled to expect should be provided in the customer facing documents and issued as case studies in the LSB Bulletins and Annual Reports</td>
</tr>
<tr>
<td><strong>Communications and financial promotions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>10</td>
<td>The Code should include reference to, and ensure compliance with, the latest consumer credit advertisement regulations.</td>
</tr>
<tr>
<td>8</td>
<td>11</td>
<td>Summary box for unsecured personal loans should remain and the Code should also provide an example of a credit card summary box in Annex A</td>
</tr>
<tr>
<td>9</td>
<td>13</td>
<td>Where an option to opt out of marketing information can be provided, this should be done on every occasion, for example a link to unsubscribe at the end of an email</td>
</tr>
<tr>
<td><strong>Credit reference agencies</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>14</td>
<td>The Code should make reference to the use of “quotation searches”</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>Paragraph 36 to be amended to say that Subscribers can give CRAs default information <strong>only</strong> if......</td>
</tr>
</tbody>
</table>
| 12               | 19           | In paragraph 42 of the Code, covering telling a
<table>
<thead>
<tr>
<th></th>
<th>CRA contact details to be included in customer facing document</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Credit assessment</strong></td>
<td>The Credit Assessment section should be amended to require a subscriber to make an assessment of whether the borrower can afford to repay the credit in a “sustainable manner” in line with the OFT Irresponsible Lending Guidance</td>
</tr>
<tr>
<td><strong>Current account overdrafts</strong></td>
<td>Subscribers should not use the length of time a current account is held with a specific bank as a factor when making a credit assessment</td>
</tr>
<tr>
<td><strong>Current account overdrafts</strong></td>
<td>Subscribers’ compliance with “The Guide to Credit Scoring” should be monitored and enforced by the LSB</td>
</tr>
<tr>
<td><strong>Current account overdrafts</strong></td>
<td>There should be a requirement to provide the main reason if a credit application is declined. Similar provisions should be included in sections 5, 6 &amp; 7</td>
</tr>
<tr>
<td><strong>Current account overdrafts</strong></td>
<td>Annex B should incorporate the new commitments for lending to micro-enterprises agreed with BIS/HMT</td>
</tr>
<tr>
<td><strong>Current account overdrafts</strong></td>
<td>Section should be re-titled ‘Current account overdrafts – arranged and unarranged’</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>New standards covering the opt-out from unarranged overdrafts should be incorporated into the Code</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>The obligations on subscribers provided by Paragraph 4.9 of the OFT report ‘Personal Current Accounts in the UK – unarranged overdrafts’ should be incorporated into the Code</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>Information on interest and charges should be provided in pre-sale literature</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>When an application is declined, the customer should be provided with the main reason without being asked by the customer</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>Overdraft charges should be subject to a minimum of 14 days pre-notification</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>Incorporate the new rights from the ‘Joint Commitment for Credit and Store Card Users’</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>Subscribers should advise customer to contact them if a limit reduction will cause them difficulties</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>Prohibit the sending of unsolicited credit card cheques</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>Risk-based repricing provisions can be extended to commercial cards at the issuer’s discretion</td>
</tr>
<tr>
<td><strong>Credit cards</strong></td>
<td>Subscribers should make consumers aware of any protections beyond Section 75 of the Consumer Credit Act 1974</td>
</tr>
<tr>
<td><strong>Loans</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Express consent should be obtained before a customer who has been refused credit is referred to another lender</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Financial difficulties</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Code to make clear that list of indicators of financial difficulties is non-exhaustive. Should also include the customer advising the lender that they are in, or heading for financial difficulties</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Provision needs to be made for customers “approaching financial difficulties” for plans (incl CFS related) to be put in place before difficulties occur</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Customer facing document to explain what customers can expect when they are in financial difficulties</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Customers should not be expected to increase their repayment offer at review unless their financial situation has improved</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Subscribers must ensure that their agents observe the Code’s requirements.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>When providing consolidation loans, subscribers should reduce/repay off existing debts being consolidated</strong></td>
<td></td>
</tr>
<tr>
<td><strong>The cost of a consolidation loan to the consumer should be no more than they are currently paying in relation to the existing debts being consolidated</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Agreement to the breathing space provision should not require the customer to be working with a debt advice agency</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Consideration should be given to specifically stating what banks should, and should not, be doing during the breathing space</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Extension of breathing space by a further 30 days should be granted unless there is good reason not to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Subscribers should always communicate directly with a customer’s appointed agent. If they need to contact the customer direct they should explain why</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Consideration should be given to tightening the wording regarding asset sales</strong></td>
<td></td>
</tr>
<tr>
<td><strong>The LSB minimum standards on ‘Set Off’ should be fully incorporated into the Code</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Token offers from customers “should” be accepted where they have no surplus income and there is a realistic prospect of the customer’s circumstances improving. Token offers should be defined in the Glossary</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Provided the expenditure figures in a Common Financial Statement fall within the “trigger figures” then proposals based upon them should be accepted automatically. Expenditure falling within trigger figures should only be challenged where the lender has additional information.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>The CFS creditor checklist should be cross</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>48</td>
<td>90</td>
</tr>
<tr>
<td>49</td>
<td>91</td>
</tr>
<tr>
<td>50</td>
<td>92</td>
</tr>
<tr>
<td>51</td>
<td>93</td>
</tr>
<tr>
<td>52</td>
<td>94</td>
</tr>
<tr>
<td>53</td>
<td>95</td>
</tr>
<tr>
<td>54</td>
<td>96</td>
</tr>
<tr>
<td>55</td>
<td>98</td>
</tr>
<tr>
<td>56</td>
<td>99</td>
</tr>
<tr>
<td>57</td>
<td>100</td>
</tr>
<tr>
<td>58</td>
<td>102</td>
</tr>
<tr>
<td>59</td>
<td>103</td>
</tr>
<tr>
<td>60</td>
<td>103</td>
</tr>
</tbody>
</table>

**Complaints**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>61</td>
<td>105</td>
<td>Information about the Financial Ombudsman Service should be provided in the Customer facing document</td>
</tr>
</tbody>
</table>

**Monitoring**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>106</td>
<td>The LSB Annual Report and Bulletins should contain case studies of the experiences of the LSB Code compliance team</td>
</tr>
</tbody>
</table>
The Banking Code - Glossary

These definitions explain the meaning of words and terms used in the Code. They are not precise legal or technical definitions.

Account aggregation
Account aggregation services allow you to have details of some or all of the online accounts you hold with financial institutions, and other information, presented on one web page. These services may be provided by a financial institution (who you may already hold an account with) or through a website not owned by a financial institution.

Banker's reference
An opinion about a particular customer's ability to enter into, or repay, a financial commitment.

Banking and payment systems
The clearing, money transmission and computer systems that are controlled by financial institutions that follow the Code.

Base rate or Bank of England base rate
This is the rate the Bank of England considers every month and publicly announces any changes to.

Basic bank account
A basic bank account will normally have the following features.
• Employers can pay income directly into the account.
• The Government can pay pensions, tax credits and benefits directly into the account.
• Cheques and cash can be paid into the account.
• Bills can be paid by direct debit, by transferring money to another account or by a payment to a linked account.
• Cash can be withdrawn at cash machines.
• There is no overdraft.
• The last penny in the account can be withdrawn.

Card
A general term for any plastic card a customer may use to pay for goods and services or to withdraw cash. In this Code, it includes debit, credit, cheque guarantee, charge cards and cash cards. It does not include electronic purses, pre-paid cards or store cards.

Cash card
A card, other than a charge card or credit card, which allows the cardholder to withdraw cash from a cash machine.

Cash machine
An automated teller machine (ATM) or freestanding machine in which a customer can use their card to get cash, information and other services.

Charge card
A card which allows you to buy items and withdraw cash up to an arranged credit limit. The terms include paying the balance in full at the end of a set period. You will normally be charged a fee each year.

Clearing
CHEQUES
A cheque normally takes six working days to clear as shown below
Day 0 – The collecting bank or building society receives the cheque.
Day 2 – The account starts to earn interest on the money paid in or reduces the balance on which overdraft interest is charged. This is also the day on which the payer's bank account will be debited with the amount shown on the cheque.
Day 4 (or day 6 for savings accounts) – The money is available to withdraw (if it is an account that allows withdrawals).
Day 6 – By the end of the day the customer can be certain that the money is theirs and cannot be reclaimed without their permission (as long as the customer has not deliberately committed fraud).
Up until the end of day 6, a cheque may still bounce and the money may be reclaimed from the payee’s account.

**CLEARING OF AUTOMATED PAYMENTS**
A new payment system is due to come into force from May 2008. The Faster Payments Service will allow electronic payments (usually made over the internet or phone) to be processed in hours rather than days. It will also be used to make quicker standing-order payments on bank working days. This service may not be available from all banks and building societies.

If this same-day service is not used, automated payments will be processed on a three-day clearing cycle through Bacs. When you give an instruction to your bank to make an automated payment, the money will normally be taken from your account on the same day. Payments through Bacs may take longer than three working days for some financial institutions. However, if the account of the person you are paying is at the same bank as yours, the amount will usually be credited on the same day.

**Common Financial Statement**
A full review of the financial position of a customer in financial difficulties. This is filled in with the help of a money adviser. It allows you to offer repayments from your available income to a group of creditors. Although it exists in a standard format agreed by the industry, we may also agree to accept an equivalent form.

**Credit card**
A card which allows you to make purchases and withdraw cash up to an arranged credit limit. You can pay off the credit we grant you in full or in part by a set date. Interest is usually charged on the amount of any balance you still owe. In the case of cash withdrawals, interest is normally charged from the transaction date. You may also have to pay an annual fee.

**Credit card cheque**
A cheque drawn against a credit card account that gives the cardholder another way of accessing funds up to their credit limit. This is usually to make transactions where credit cards are not accepted. Interest is normally charged from the transaction date. Important features include the following.

- Credit card cheques may not provide the same level of protection as when you buy items with a credit card.
- There is usually a transaction fee for each cheque you use.
- The interest-free period of the credit card may not apply to the credit card cheque.

**Credit reference agencies**
Organisations, licensed under the Consumer Credit Act 1974, which hold information about people that is useful to lenders. Financial institutions may contact these agencies for information to help them make various decisions – for example, whether or not to open an account or provide loans or grant credit. Financial institutions may also give the agencies information.

**Current Account**
An account with a bank or building society for managing day-to-day money.

**Debit card**
A payment card linked to a bank or building society account, used to pay for goods and services by taking the money from the cardholder’s account direct. A debit card is usually also combined with other facilities such as cash card and cheque guarantee functions. Some debit cards, sometimes known as ‘Solo’ or ‘Electron’ cards, need to be authorised immediately for the retailer to be able to complete the transaction.

**Direct debit**
A pre-authorised debit on the payer’s account set up by the payee (known as an originator). Direct debits are typically used to make regular payments for debts such as utility bills and insurance payments and amounts may be variable.

**Dormant accounts, lost accounts and unclaimed assets**
Accounts that a customer has forgotten about or not used for an extended length of time. Under the unclaimed assets scheme due to be introduced in 2009, money from accounts which have not been used for a longstanding period will be transferred for use on community causes.
Durable medium
Means any instrument which enables personal customers to store information addressed personally to them in such a way that it is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information.

Electronic purse
Any card, or function of a card, which contains real value in the form of electronic money which someone has paid for beforehand. Some cards can be reloaded with more money and can be used for a range of purposes.

Fixed rate
An interest rate which is guaranteed not to change over a set period of time.

Fixed term
This applies to products and services which have a set lifetime. The customer may be charged if the financial institution agrees to change the product or service before it is due to end.

Guarantee
A promise given by a person called ‘the guarantor’ to pay another person’s debts if that person does not pay them.

Interest
A charge for borrowing money, or a reward for saving money. It is usually shown as a percentage of the amount borrowed or saved.

Originator
A company (either a retail or service organisation) which collects payments from a customer’s account in line with the customer’s instructions. This only applies to direct debits or recurring transactions.

Other security information
Facts and information only you know that are used for identification when using accounts.

Out-of-date cheque
A cheque which has not been paid because the date written on the cheque is too old (normally older than six months).

Overdraft
A facility that allows you to spend more money from your account than you have in it.

Password
A word or an access code which you have chosen, to allow you to use a phone or internet banking service.

Personal customer
Any person who is acting for purposes which are not linked to their trade, business or profession. (This definition is based on the one used in European law and by the Financial Services Authority with the title of either ‘consumer’ or ‘retail customer’.)

In practice, personal customers may act in a number of roles. The above definition does not include an individual acting, for example:
- as trustee of a trust such as a housing or NHS trust;
- as a member of the governing body of a club or other unincorporated association such as a trade body or a student union; or
- as a pension trustee.

Examples of personal customers acting in roles that are included in the above definition are:
- personal representatives, including executors, unless they are acting in a professional role (for example, a solicitor acting as executor); and
- private individuals acting in personal or other family circumstances (for example, as trustee of a family trust).
PIN (personal identification number)
A confidential number which allows customers to buy things, withdraw cash and use other services at a cash machine. Instead of signing a receipt, you will often have to enter your PIN into a machine at the counter to authorise a transaction.

Pre-paid card
A payment card where an amount of money is loaded onto it before it is used. The card can be used to buy goods and services, or may allow you to withdraw cash from cash machines. Charges may be applied for various services. Some prepaid cards can be reloaded.

Recurring transaction
A regular payment (other than a direct debit or standing order) collected from a customer’s card account by an originator, in line with the customer's instruction. Recurring transactions are not covered by the Direct Debit Guarantee.

Savings Account
Savings accounts are deposit-based. This means you’ll usually get back the money you have put in, plus interest.

Security
A word used to describe valuable items such as title deeds to houses, share certificates, life policies and so on, which represent assets used as support for a loan or other liability. Under a secured loan, the lender has the right to sell the security if the loan is not repaid.

Standard account services
Opening, maintaining and running accounts for transmitting money (for example, by cheque debit card). These services would normally be provided in basic or current accounts.

Standing orders
An instruction from customers to their bank or building society to make regular automated payments of a specific amount.

summary box
This gives you a brief summary of the main features of the credit card; unsecured loan or savings account you are considering, so you can compare different products more easily

Unpaid cheque
This is a cheque which, after being paid into the account of the person it is written out to, is returned ‘unpaid’ (bounced) by the financial institution whose customer issued the cheque. This leaves the person the cheque was written out to without the money in their account.

Working days
Monday to Friday, not including bank holidays.