



Response to FSA consultation “Regulating retail banking conduct of business”

The Taskforce’s response will address question 7 of the consultation, “Do you think there are elements of the current Banking Codes and other relevant codes/guidelines that would not appear in the PSD Regulations or BCOBS (as proposed in this CP) but which ought not to be lost?”

1. The Taskforce believes that the proposals in the FSA’s consultation present an opportunity to further improve the experience of consumers, and in particular those who wish to open basic bank accounts.

There are a number of measures currently contained in the Banking Code, particularly relating to the opening and administering of basic bank accounts, that the Taskforce would like to see included in any new constitutional regime. At present, the proposed extension of the FSA’s Principles and Banking Conduct Of Business Sourcebook (BCOBS) covering deposit taking activities will not address these specific concerns.

The commitments regarding basic bank accounts in the Banking Code include:

- to assess whether a customer’s needs are best suited by a basic bank account at the time of account opening
- to offer a basic bank account to customers who ask for and meet the conditions for one
- to inform basic bank account customers whether the account can be accessed at a Post Office

These commitments, underpinned by the considerable compliance monitoring undertaken by the BCSB, have played a vital role in making progress towards the Government's and industry's shared goal of reducing the number of unbanked households in the UK to fifty percent of the 2003 level. It is crucial that the conditions under which this progress was made are maintained, especially when many people are facing a time of increasing financial uncertainty, and the Taskforce feels it is very important that these elements of the Banking Code are not lost.

2. In addition the Taskforce made a number of recommendations in their submission to the recent independent review of the Banking Code. The Taskforce believes that these recommendations should be included in any new constitutional regime.

These recommendations included:

- that, since basic bank accounts do not provide a credit facility, banks should undertake not to conduct credit reference checks for basic bank account applicants beyond that required to verify identity and check there is no history of fraud,
- that where it is necessary for banks to run a check, they should use a 'quotation search' (or other low-impact check), which does not leave a 'footprint' on the customer's credit file
- that where applicable, account literature and bank staff should explain the use of credit checks for basic bank account applications, making clear that credit history information will not be used to assess applications and that the check will not leave a 'footprint' on customers' credit files.
- that if credit checks are used for the purpose of opening a basic bank account, any resulting evidence of a poor credit history should not form the basis of refusing an application for a basic bank account.

- that there should be a best practice recommendation for undischarged bankrupts not to be automatically refused access to a basic bank account unless they have a record of fraud
- that having a debt management plan should not exclude a person from opening a basic bank account.
- that banks should provide that any existing customer wanting to downgrade a current account to a basic bank account for money management reasons should be permitted to do so

Full supporting details for these recommendations are available in the Taskforce's response to the Banking Code Review, which is included alongside this response for reference.

3. The Taskforce further notes that monitoring of subscribers adherence to the Banking Code was carried out to a high standard by the Banking Code Standards Board, and in particular the Taskforce were impressed by the mystery shopping exercises conducted into basic bank account opening and the positive contribution that this level of monitoring and evaluation has had on industry practice. The Taskforce would be concerned if moving provisions of the Banking Code to industry guidance led to a reduction in the quality of monitoring activity on specific provisions. The Taskforce notes that neither the FSA nor the guidance provider is expected to monitor compliance against individual pieces of industry guidance¹

4. The Taskforce notes that the proposals leave a gap on the enforcement of details such as those contained in the current Banking Code. Since the FSA confirmed Industry Guidance is optional², and there is no presumption that non-compliance with such guidance entails a breach of requirements³ and that, furthermore, there is no requirement on any party to monitor compliance with the guidance, the Taskforce is very concerned that the status of the

¹ [PS07/16](#) FSA Confirmation of Industry Guidance, section 2.28

² Ibid

³ Ibid 2.7

current commitments in the Banking Code, in particular concerning basic bank account provision, would be significantly weaker in the proposed regime.