

Banking: Conduct of Business sourcebook

Chapter 5

Post sale

5.1 Post sale requirements

Service

- 5.1.1 **R** A *firm* must provide a service in relation to a *retail banking service* which is prompt, efficient and fair to a *banking customer* and which has regard to any communications or *financial promotion* made by the *firm* to the *banking customer* from time to time.
- 5.1.2 **G** In determining the order in which to process payment instructions in relation to the *retail banking service*, a *firm* must have regard to its obligation to treat *banking customers* fairly.
- 5.1.3 **G** [deleted]

Set-off

- 5.1.3A **G** To ensure compliance with its obligations under **BCOBS 5.1.1 R** and *Principle 6*, on any occasion where it proposes to exercise a *right of set-off*, a *firm* (other than a *credit union*) should, with respect to its dealings with *consumers*:
- (1) review the information available and accessible to the *firm* relating to the *consumer's* account, on an individual basis, and estimate the amount of any *subsistence balance*;
 - (2) refrain from seeking to set off or combine:
 - (a) any debt due from, or a debit balance on an account held by, a *consumer* against or with that *subsistence balance*;
 - (b) any debt due from, or a debit balance on an account held by, a *consumer* in a personal capacity against or with any sum of money payable by the *firm* to the *consumer* or standing to the credit of the *consumer* in an account held with the *firm*, where the *firm* knows or reasonably ought to know that:
 - (i) a third party is beneficially entitled to that money or that the *consumer* is a fiduciary in respect of that money; or
 - (ii) the *consumer* has received that money from a government department, local authority or NHS direct payment body for a specific purpose or is under a legal obligation to a third party to retain and deal with that money in a particular way.

- 5.1.3B** **G** (1) If it becomes apparent to a *firm* after it has exercised a *right of set-off* that it has set off or combined a debt due from, or a debit balance on an account held by, a *consumer* against or with:
- (a) the *consumer's subsistence balance*; or
- (b) money payable by the *firm* to the *consumer*, or standing to the credit of the *consumer* in an account held with the *firm*, that falls within ■ BCOBS 5.1.3AG (2)(b)(i) or ■ (ii);
- the *firm* should refund to the *consumer* the sum debited from the account of the *consumer* in exercise of the *right of set-off* unless it is fair not to do so.
- (2) If, in the circumstances referred to in (1), the *firm* does not provide a refund of the sum debited from the account in exercise of the *right of set-off*, the *firm* should be able to justify that it is fair not to do so and should consider taking other remedial action having regard to its obligations under ■ BCOBS 5.1.1 R and *Principle 6*.

Dealings with customers in financial difficulty

- 5.1.4** **G** *Principle 6* requires a *firm* to pay due regard to the interests of its customers and to treat them fairly. In particular, a *firm* should deal fairly with a *banking customer* whom it has reason to believe is in financial difficulty.

Moving a retail banking service

- 5.1.5** **R** A *firm* must provide a prompt and efficient service to enable a *banking customer* to move to a *retail banking service* (including a *payment service*) provided by another *firm*.
- 5.1.5A** **R** A *firm* must provide a prompt and efficient service to enable a *banking customer* to move to another *retail banking service* (including a *payment service*) provided by that *firm*.
- 5.1.5B** **G** (1) In taking steps to ensure a service is prompt and efficient, in line with ■ BCOBS 5.1.5AR, a *firm* should make appropriate use of the information and documents it already holds in relation to a *banking customer*.
- (2) Where, for example, an existing customer wishes to move to another account with the same *firm* and the *firm* already holds data and documents in relation to customer due diligence measures, including data and documents to verify the identity of that customer that are suitable for the purposes of anti-money laundering requirements, the *firm* should consider whether it would be unnecessarily duplicative to apply the same account opening procedures in that case as would apply to a new customer (although a *firm* should ensure its policies and procedures are consistent with the requirements of the *Money Laundering Regulations* and other legislation in relation to financial crime).
- (3) Where a *firm* provides an online or mobile telephone banking facility to a *banking customer*, the *firm* may wish to consider how the

electronic process for moving to another account provided by that *firm* can be made most simple.

5.1.6 **G** Where a *banking customer* wishes to move a *retail banking service* and there are no arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will extend only to providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account and returning any *deposit* (with interest as appropriate) to the *banking customer*.

5.1.7 **G** Where a *banking customer* wishes to move a *retail banking service* and there are arrangements between the *firm* the *banking customer* wishes to move from and the *firm* that the *banking customer* wishes to move to, the service provided by the former *firm* will include providing a prompt and efficient service in respect of termination of the *retail banking service*, for example by closing an account, transferring any account balance and making arrangements in respect of any direct debits or standing orders.

5.1.7A **G** ■ BCOBS 5.1.6G and ■ 5.1.7G do not apply to a *firm* with respect to a switching service that the *firm* is required to offer under Part 3 of the *Payment Account Regulations*.

5.1.8 **G** A *firm* may find it helpful to take account of the Cash ISA to Cash ISA Transfer Industry Guidelines.

Lost and dormant assets

5.1.9 **R** A *firm* must make appropriate arrangements to enable a *banking customer*, so far as is possible, to trace and, if appropriate, to have access to a *deposit* held (or formerly held) in a *retail banking service* provided by the *firm*. This applies even if:

- (1) the *banking customer* may not be able to provide the *firm* with information which is sufficient to identify the *retail banking service* concerned; or
- (2) the *banking customer* may not have carried out any transactions in relation to that *retail banking service* for an extended period of time.

5.1.10 **R** If a *firm* participates in the scheme under the Dormant Bank and Building Society Accounts Act 2008, it must inform a *banking customer* of this fact and provide appropriate information regarding the terms of the scheme on entering into communications with a *banking customer* regarding a *dormant asset*.

Security of electronic payments

5.1.10A **R** A *firm* that allows a *banking customer* to make electronic payments must consider the risk of fraud and put in place appropriate procedures and technical safeguards to ensure that such payments can be carried out in a safe and secure manner.

- 5.1.10B **G** Such procedures should include authentication procedures for the verification of the identity of the *banking customer* or the validity of the use of a particular *payment instrument*, proportionate to the risks involved. Where appropriate, *firms* may wish to consider the adoption of 'strong customer authentication', as defined in the *Payment Services Regulations*, and specified in the *SCA RTS*. The *FCA* gives guidance on strong customer authentication in Chapter 20 of the *FCA's Approach Document*.

[**Note:** see <https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf>.]

Firm's liability for unauthorised payments

- 5.1.11 **R**
- (1) Where a *banking customer* denies having authorised a payment, it is for the *firm* to prove that the payment was authorised.
 - (2) Where a payment from a *banking customer's* account was not authorised by the *banking customer*, a *firm* must, within a reasonable period, refund the amount of the unauthorised payment to the *banking customer* and, where applicable, restore the *banking customer's* account to the state it would have been in had the unauthorised payment not taken place.

Banking customer's liability for unauthorised payments

- 5.1.12 **R**
- (1) Subject to (2) and (3), a *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for an amount up to a maximum of £35 for losses in respect of unauthorised payments arising:
 - (a) from the use of a lost or stolen *payment instrument*; or
 - (b) from the misappropriation of the *payment instrument*.
 - (1A) Paragraph (1) does not apply where:
 - (a) the loss, theft or misappropriation of the *payment instrument* was not detectable by the *banking customer* prior to the payment; or
 - (b) the loss was caused by acts or omissions of an *employee* or *branch* of the *firm* or of an entity which carried out activities on behalf of the *firm*.
 - (2) A *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for all losses in respect of unauthorised payments:
 - (a) where a *banking customer* has acted fraudulently; or
 - (b) (subject to (3)) where a *banking customer* has intentionally, or with gross negligence, failed to comply with his or her obligations under the agreement for the *retail banking service* in relation to the issue or use of the *payment instrument* or to take all reasonable steps to keep its personalised security features safe.
 - (3) Except where a *banking customer* has acted fraudulently, a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any losses in respect of unauthorised payments where:

- (a) the unauthorised payment arises after the *banking customer* has notified the *firm* of the loss, theft, misappropriation or unauthorised use of the *payment instrument*;
 - (b) the *firm* has failed to ensure that appropriate means are available at all times to enable the *banking customer* to notify it of the loss, theft, misappropriation or unauthorised use of a *payment instrument*; or
 - (c) the *payment instrument* has been used in connection with
 - (i) a *distance contract*; or
 - (ii) a *distance selling contract* other than an *excepted contract*.
- (4) Except as provided in (1) to (3), a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any consequential loss in respect of an unauthorised payment.

Value date

5.1.13

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- (1) The reference date used by a *firm* for the purpose of calculating interest on funds credited to an account of a *banking customer* held with it must be no later than:
 - (a) the *business day* on which the funds are credited to the account of the *firm*; or
 - (b) in the case of cash placed with a *firm* for credit to a *banking customer's* account in the same currency as that account, immediately after the *firm* receives the funds.
- (2) Paragraph (1) does not apply to funds credited to a *banking customer's* account by means of a paper cheque.

Non-execution or defective execution of payments

5.1.14

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- (1) Where a *banking customer* claims that a payment has not been correctly executed, it is for the *firm* to prove that the payment was authenticated, accurately recorded, entered in the *firm's* accounts and not affected by a technical breakdown or some other deficiency.
- (2) In paragraph (1) "authenticated" means the use of any procedure by which a *firm* is able to verify the use of a specific *payment instrument*, including its personalised security features.

5.1.15

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- (1) Where a payment from an account of a *banking customer* is executed in accordance with the *payment routing information* provided in respect of that payment, it shall be treated as correctly executed by each *firm* involved in executing the payment.
- (2) Where incorrect *payment routing information* has been provided to a *firm* in respect of a payment:
 - (a) ■ BCOBS 5.1.16R and ■ BCOBS 5.1.17R do not apply in relation to that payment;
 - (b) the *firm* must make reasonable efforts to recover the funds involved in the transaction; and

(c) if the *firm* is unable to recover the funds it must, on receipt of a written request, provide to the *banking customer* all available relevant information in order for the *banking customer* to claim repayment of the funds.

(2A) A *firm* that is in receipt of funds as the result of the provision of incorrect *payment routing information* by a *banking customer* must co-operate with the *firm* that is seeking to recover the funds, in particular by providing all relevant information for the collection of the funds.

(3) A *firm* and a *banking customer* may agree on a charge for taking the steps referred to in (2)(b). Any such charge must reasonably correspond to the *firm's* actual costs.

5.1.15A **G** For the purposes of ■ BCOBS 5.1.15R 'relevant information' will include the name of the account holder into whose account the funds have been paid, and an address at which documents can be effectively serviced on that *person*.

5.1.15B **G** ■ BCOBS 5.1.15R (2) (c) and ■ BCOBS 5.1.15R (2A) may require a *firm* to disclose personal data about a customer to whom it provides a bank account where funds have been transferred to that account as a result of incorrect *payment routing information*. When providing information to the customer to ensure the fair and transparent processing of personal data as required by applicable data protection legislation a *firm* should take account of its potential obligations under ■ BCOBS 5.1.15R(2)(c) and ■ BCOBS 5.1.15R(2A).

5.1.16 **R**

(1) Where a *banking customer* instructs or requests a *firm* to make a payment from his or her account and the payment is not correctly executed, the *firm* must, without undue delay:

(a) refund to the *banking customer* the amount of the non-executed or defective payment; and

(b) where applicable, restore the *banking customer's* account to the state in which it would have been had the defective payment not taken place;

unless:

(c) the *firm* can prove that the amount of the payment was received by another *firm* (referred to in this *rule* as "firm B") with which the relevant account of the intended recipient is held.

(2) Where (1)(c) applies, firm B must:

(a) immediately make available the amount of the payment to the intended recipient; and

(b) where applicable, credit the corresponding amount to the intended recipient's account.

- 5.1.17** **R** Where:
- (1) an instruction or request for a payment to be made from a *banking customer's* account is given by the intended recipient of that payment to a *firm*;
 - (2) that *firm* can prove that it correctly transmitted the instruction or request to the *firm* with which the relevant account of the *banking customer* is held (in this rule referred to as "firm A"); and
 - (3) the payment is not correctly executed;
- firm A must, as appropriate and without undue delay:
- (4) refund to that *banking customer* the amount of the payment; and
 - (5) restore that *banking customer's* account to the state in which it would have been had the defective payment not taken place.
- 5.1.18** **R** Where a *firm* is required to give a refund or take other remedial action under ■ BCOBS 5.1.16R or ■ BCOBS 5.1.17R, it must also refund:
- (1) any charges for which a *banking customer* is responsible; and
 - (2) any interest which a *banking customer* must pay;
- as a consequence of the non-execution or defective execution of the payment.
- 5.1.19** **R** Where the non-execution or defective execution of a payment by a *firm* is due to abnormal and unforeseeable circumstances beyond the *firm's* control, the consequences of which would have been unavoidable despite all efforts to the contrary, ■ BCOBS 5.1.16R to ■ BCOBS 5.1.18R shall not apply with respect to that incorrectly executed payment.