

Banking: Conduct of Business sourcebook

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Chapter 1

Application

1.1 General application

The general application rule

- 1.1.1 **R** This sourcebook applies to a *firm* with respect to the activity of *accepting deposits* from *banking customers* carried on from an establishment maintained by it in the *United Kingdom* and activities connected with that activity.

Limitations on the general application rule

- 1.1.2 **R** The general application *rule* is modified in the chapters of this sourcebook for particular purposes.
- 1.1.3 **R** Except as provided for in ■ BCOBS 1.1.4R, this sourcebook does not apply to:
- (1) *payment services* where Part 5 and 6 of the *Payment Services Regulations* apply; or
 - (2) a *person* or *firm* which has permission for *accepting deposits* but only for the purposes of, or in the course of, an activity other than *accepting deposits*.
- 1.1.4 **R**
- (1) Chapters 2, 2A, 5 and 6 of *BCOBS* (except for ■ BCOBS 5.1.11 R to ■ BCOBS 5.1.19 R) and ■ BCOBS 4.3 apply to *payment services* where Parts 5 and 6 of the *Payment Services Regulations* apply.
 - (2) Chapter 3 of *BCOBS* applies to *payment services* where Parts 5 and 6 of the *Payment Services Regulations* apply with the modifications set out in ■ BCOBS 3.1.2 R(2).
 - (3) A *firm* will not be subject to *BCOBS* to the extent that it would be contrary to the *United Kingdom's* obligations under an *EU* instrument.
- 1.1.5 **R** ■ BCOBS 2.2A, ■ BCOBS 4.1.2G(2A) to (2E), (3A), (6A) and (6B), ■ BCOBS 4.1.4AG(2)(a), ■ BCOBS 5.1.3AG, ■ BCOBS 5.1.3BG, ■ BCOBS 5.1.5AR, ■ BCOBS 5.1.5BG and ■ BCOBS 5.1.13R do not apply to a *credit union*.

Exclusion of liability

- 1.1.6 **R** A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *banking customer* unless

it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.

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The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

Chapter 2

Communications with banking customers and financial promotions

2.1 Purpose and Application: Who and what?

2.1.1 **G** *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. This chapter reinforces these requirements by requiring a *firm* to pay regard to the information needs of *banking customers* when communicating with, or making a *financial promotion* to, them and to communicate information in a way that is clear, fair and not misleading.

2.1.2 **R** In addition to the general application rule (■ BCOBS 1.1.1 R), this chapter applies to the *communication*, or *approval for communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *retail banking service* unless it can lawfully be *communicated* by an *unauthorised person* without *approval*.

2.1.3 **R** This chapter applies to a *firm*:

- (1) communicating with a *banking customer* in relation to *accepting deposits*;
- (2) *communicating a financial promotion* that is not an *excluded communication*; or
- (3) *approving a financial promotion*.

2.2 The fair, clear and not misleading rule

- 2.2.1** **R** A *firm* must take reasonable steps to ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- 2.2.2** **G** The fair, clear and not misleading *rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a communication addressed to a *banking customer* who is not a *consumer* may not need to include the same information, or be presented in the same way, as a communication addressed to a *consumer*.
- 2.2.3** **G** The *rules* in ■ SYSC 3 (Systems and Controls) and ■ SYSC 4 (General organisational requirements) require a *firm* to put in place systems and controls or policies and procedures in order to comply with the *rules* in ■ COBS 4.6 (Past, simulated past and future performance), ■ COBS 4.7.1 R (Direct offer financial promotions), ■ COBS 4.10 (Systems and controls and approving and communicating financial promotions) and this chapter of *BCOBS*.
- 2.2.4** **G** Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 create criminal offences relating to certain misleading statements and practices.
- 2.2.5** **G** A communication or a *financial promotion* should not describe a feature of a product or service as "guaranteed", "protected" or "secure", or use a similar term unless:
- (1) that term is capable of being a fair, clear and not misleading description of it; and
 - (2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

2.2A Summary box for savings accounts

2.2A.1

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- (1) A *firm* must ensure that a *direct offer financial promotion* in relation to a *savings account* includes a summary box in the form set out in ■ BCOBS 2 Annex 1R.
- (2) In the case only of a *direct offer financial promotion* on paper, it is sufficient for the purposes of (1) if the *direct offer financial promotion* is accompanied by a summary box on a separate sheet.
- (3) The summary box must contain, in the sequence of rows set out in the table in ■ BCOBS 2 Annex 1R:
 - (a) the headings prescribed in the first column in the table in ■ BCOBS 2 Annex 1R; and
 - (b) the corresponding information described in the second column in the table in ■ BCOBS 2 Annex 1R.
- (4) In the case of a *direct offer financial promotion* communicated by voice telephony:
 - (a) this *rule* (except for this paragraph) does not apply; and
 - (b) the *firm* must provide each of the items of information described in the second column in the table in ■ BCOBS 2 Annex 1R (except for the information in the row that includes the heading “What would the estimated balance be after [x] months based on a £[x] deposit?”) orally in clear, easily understandable language during the telephone communication.
- (5) The *firm* must present the summary box in clear, easily understandable language and in a prominent way.
- (6) In the case of a *direct offer financial promotion* communicated in an electronic medium which is constrained by space, a *firm* may amend the form of the summary box where to do so would make the presentation of the information clearer in that particular electronic medium.
- (7) Where more than one rate of interest may apply to a *savings account*, the summary box must show each rate of interest with equal prominence. In particular, the lowest rate of interest that may apply to the *savings account* must not be given any less prominence in the summary box than the other rate or rates of interest shown in the summary box.
- (8) The summary box must not include any information other than the information described in the table in ■ BCOBS 2 Annex 1R.

2.2A.2

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- (9) The summary box may relate to more than one *savings account* provided that the information in relation to each respective account is presented in a separate column in the summary box and is clearly distinguishable from information in relation to other accounts.
- (1) The summary box should be completed in accordance with the *guidance* set out in the notes to the summary box in ■ BCOBS 2 Annex 1R.
- (2) The requirement under ■ BCOBS 2.2A.1R is to include the rate or rates of interest that apply to the *savings account* in the summary box itself. It is not, therefore, permissible to simply refer in the summary box to a separate webpage or document where the rate or rates of interest can be found.
- (3) Where the rate of interest that applies to a *savings account* may change depending on the period that has elapsed since it was opened or on whether certain conditions are met, a *firm* should incorporate the table set out in ■ BCOBS 2 Annex 2G in the row of the summary box that includes the heading "What is the interest rate?" unless it would be misleading to do so.
- (4) The effect of ■ BCOBS 2.2A.1R(1) is that the summary box must be incorporated in the *direct offer financial promotion* itself. It is not sufficient, for example, to include in a *direct offer financial promotion* that appears on a website a link to a separate page containing the summary box. ■ BCOBS 2.2A.1R(2) provides a limited exception to this where a *direct offer financial promotion* is on paper, in which case the summary box may accompany the *direct offer financial promotion* as a separate document.
- (5) The effect of ■ BCOBS 2.2A.1R(8) is that any additional information in relation to a *savings account* that a *firm* chooses to provide must appear outside the summary box.
- (6) A *firm* may wish to include a statement in close proximity to the summary box that the information provided in it is a summary of the key features of the *savings account* and is not intended to be a substitute for reading the terms and conditions that apply to the account.

2.3 Other general requirements for communications and financial promotions

- 2.3.1** **R** A *firm* must ensure that each communication made to a *banking customer* and each *financial promotion communicated or approved by the firm*:
- (1) includes the name of the *firm*;
 - (2) is accurate and, in particular, does not emphasise any potential benefits of a *retail banking service* without also giving a fair and prominent indication of any relevant risks;
 - (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
 - (4) does not disguise, diminish or obscure important information, statements or warnings.
- 2.3.2** **G** The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *banking customer* can identify the *firm* communicating the information.
- 2.3.3** **G** In deciding whether, and how, to *communicate* information to a particular target audience, a *firm* should take into account the nature of the *retail banking service*, the *banking customer's* likely or actual commitment, the likely information needs of a reasonable recipient, and the role of the communication or *financial promotion* in the sales process.
- 2.3.4** **G** If a communication or a *financial promotion* names the *FCA*, *PRA* or both as the regulator of a *firm* and refers to matters not regulated by the *FCA*, *PRA* or both, the *firm* should ensure that the communication or *financial*

promotion makes clear that those matters are not regulated by the *FCA*, *PRA* or both.

2.3.5 **G** When *communicating* information, a *firm* should consider whether omission of any relevant fact will result in information given to the *banking customer* being insufficient, unclear, unfair or misleading.

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

2.3.7 **R** If a communication or a *financial promotion* compares a *retail banking service* with one or more other *retail banking service* (whether or not provided by the *firm*), the *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way.

2.3.8 **R** If a communication or a *financial promotion* in relation to a *retail banking service* refers to a particular tax treatment or rate of interest payable, a *firm* must ensure that a prominent statement that the tax treatment or the rate of interest payable:

(1) depends on the individual circumstances of each *banking customer*;
and

(2) may be subject to change in the future;

is either included in that communication or *financial promotion*, or provided to the *banking customer* on paper or in another *durable medium* in good time before the *banking customer* is bound by the contract for that *retail banking service*.

2.3.9 **G** When designing a *financial promotion*, a *firm* may find it helpful to take account of the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts.

2.4 Structured deposits, cash deposit ISAs and cash deposit CTFs

- 2.4.1** G If a *financial promotion* relates to a *structured deposit*, rules in ■ **COBS 4.6** (Past, simulated past and future performance) will also apply.

- 2.4.2** G If a *financial promotion* relates to a *cash deposit ISA*, *cash-only lifetime ISA* or *cash deposit CTF*, ■ **COBS 4.7.1 R** (Direct offer financial promotions) also applies.

Form of Summary Box for Savings Accounts

This annex is referred to in ■ BCOBS 2.2A.1R

Summary Box	
Account name	Name of <i>savings account</i>
What is the interest rate?	<p>The rate or rates of interest that apply to the <i>savings account</i> (see note 1).</p> <p>Where different rates of interest apply to the <i>savings account</i> in different circumstances, an explanation of the circumstances in which each of the different rates applies (see note 2).</p> <p>Where an interest rate automatically tracks a reference interest rate (see note 3):</p> <ul style="list-style-type: none"> -a statement that this is the case, identifying the reference interest rate; -an explanation of how the applicable interest rate is calculated on the basis of the reference interest rate; -an explanation of how the customer can access and monitor the level of the reference interest rate from time to time, including a website link to where the latest level of the reference interest rate can be found, where practicable. <p>The times at which interest payments are calculated and credited to the <i>savings account</i>.</p>
Can [name of <i>firm</i>] change the interest rate?	<p>Whether or not the <i>firm</i> has the right to change the rate or rates of interest.</p> <p>Where the <i>firm</i> has the right to change the rate of interest, brief details of the circumstances in which that right may be exercised and how and when notice of the change will be given (see note 4).</p>
What would the estimated balance be after [x] months based on a £[x] deposit?	<p>One or more projections of the future balance of the <i>savings account</i>, which provide a representative illustration of the cash returns that the account will generate (see notes 5 to 9).</p> <p>A statement of the assumptions on which the projection is based.</p>
How do I open and manage my account?	<p>Details of any eligibility criteria that apply to the <i>savings account</i> (see note 10).</p> <p>A brief description of how to open the <i>savings account</i>, including a reference to any service available that enables a <i>banking customer</i> to switch to the <i>savings account</i>.</p> <p>Whether a minimum amount must be deposited to open the <i>savings account</i> and, if so, that amount.</p> <p>Whether a minimum amount must be deposited in the <i>savings account</i> on a regular basis and, if so, that amount, the frequency with which it must be paid, and any consequences of not doing so.</p>

Summary Box

Whether a maximum amount may be deposited in the *savings account* in any specified period of time and, if so, the amount and the period.

Whether there is a maximum amount that may be held in the *savings account* and, if so, that amount (see note 11).

A reference to the channels through which the *banking customer* can communicate with the *firm* and give instructions in relation to the *savings account* (see note 12).

Can I withdraw money?

An explanation of how money may be withdrawn from the *savings account*, including any conditions or consequences for making withdrawals (see note 13).

For *fixed-term savings accounts*, an explanation of what happens at the end of the fixed term.

Additional information

Any other information, the inclusion of which is necessary to make the summary box fair, clear and not misleading including, where applicable, information regarding tax deductions or treatment (see note 14).

Notes:

Note 1: A *firm* may wish to use the annual equivalent rate of interest and, where it does so, it should take account of the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts.

Note 2: If, for example:

-an introductory, promotional, or preferential rate of interest applies to the account until a specified future date or the end of a fixed period; or

-there are ascending or descending tiers of interest rates that apply to certain increments of the balance of the account, or that are determined by reference to the total balance of the account; or

-there are graduated rates of interest, the application of which depends on certain conditions being met or on the *banking customer* taking or refraining from taking certain action;

the summary box should include details of this.

Note 3: 'Reference interest rate' has the same meaning as in the *Payment Services Regulations*.

Note 4: A *firm* may wish to direct the *banking customer's* attention to the relevant clause in the terms and conditions that sets out the reasons for which the *firm* may change the interest rate and the procedure for doing so.

Note 5:

-In the case of a *fixed-term savings account*, the *firm* should include a projection of the balance of the *savings account* on the date on which the fixed term expires.

-Where there is to be a reduction in the rate of interest that applies to the *savings account* on a specified future date, or at the end of a fixed period, as the result of the expiry of an introductory, promotional or preferential rate of interest, the *firm* should include a projection of the balance of the *savings account* on the date of the expiry of that introductory, promotional or preferential rate of interest and a second projection of the balance of the *savings account* on the first anniversary of that date.

-In any other case, the *firm* should include a projection of the balance of the *savings account* on the first anniversary of the opening of the account.

Note 6: In making the projection, a *firm* should assume that £1000 is deposited in the account at the time it is opened and that no further deposits or withdrawals are made, unless this would make the projection misleading. This may be the case, for example, where a *banking customer* is required to make a minimum deposit in excess of £1000 at the time the account is opened or is not permitted to deposit that sum at that time. Where a *banking customer* is required to make periodic deposits at specified intervals, the projection should be based on a pattern of deposits that is representative of the terms and conditions that apply to the account.

Summary Box

Note 7: If different rates of interest apply to the *savings account* in different circumstances, a *firm* should include a number of projections to illustrate the cash returns that the account will generate in those different circumstances. If, for example, there is an uplift in the rate of interest on the condition that the *banking customer* does not make a withdrawal from the *savings account*, a *firm* should include in the summary box both a projection that assumes that the condition is met and a lower projection that assumes that the condition is not met. If different bands of deposit in the *savings account* attract different tiers of interest, a *firm* should include in the summary box several projections that illustrate the cash returns that deposits up to each balance band will generate.

Note 8: The *firm* may wish to include in the summary box that the projection is provided for illustrative purposes only and does not take into account the individual circumstances of the *banking customer*.

Note 9: Where the rate of interest automatically tracks a reference interest rate, the projection may be based on the level of the reference interest rate as it stands at the time the projection is made. Where this is the case, the summary box should indicate that the projection is based on the reference interest rate as it stood on the relevant date and that it does not take into account that the level of the reference interest rate may fluctuate over the period that the projection covers.

Note 10: The summary should, for example, indicate if it is a requirement to open the *savings account* that the *banking customer* holds another account or product with the *firm*.

Note 11: If the *banking customer* is not required to deposit a minimum amount to open the *savings account*, the summary box should include a statement to this effect. Similarly, if there is no limit on the amount that may be held in the *savings account*, the *firm* should state this in the summary box.

Note 12: The summary box should, for example, indicate if the *banking customer* can give instructions to the *firm* about the *savings account* in branch, over the telephone, by electronic mail or through a website.

Note 13: The summary box should indicate if the *banking customer* is required to provide a certain period of notice of an intention to withdraw money from the *savings account*. If interest to which the *banking customer* is entitled is reduced or extinguished, or if a charge is imposed, as a result of withdrawing money from the *savings account*, details of this should be included in the summary box.

Note 14: Where appropriate, a *firm* may wish to include information on the tax implications for the *banking customer*, such as a brief explanation of the tax implications of an *individual savings account*.

Guidance on presentation of interest-rate information in savings account summary box

This annex is referred to in ■ BCOBS 2.2A.2G(3).

What is the interest rate?	Interest rate without bonus	X%
	Interest rate with bonus (includes a bonus of X%)	X%
What is the interest rate?	Interest rate where all conditions are met	X%
	Interest rate where one or more conditions are not met	X%

Chapter 2A

Optional additional products

2A.1 Restriction on marketing or providing an optional product for which a fee is payable

2A.1.1

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- (1) A *firm* must not enter into an agreement with a *banking customer* under which a charge is, or may become, payable for an optional additional product unless the *banking customer* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *banking customer* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *banking customer* actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *banking customer* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
 - (a) a contravention of (1) or (2) will take place with respect to the product; or
 - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *customer* is not to be regarded as an active election for the purposes of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.
- (6) A charge includes a financial consideration of any kind whether payable to the *firm* or any other *person*.
- (7) An optional additional product is a good, service or right of any description (whether or not financial in nature) that a *banking customer* may obtain (or not, as the case may be) at his or her election in connection with or alongside a *retail banking service*.
- (8) (a) Where a *banking customer* is required to obtain a specific additional product in order to receive the *retail banking service*, the product is not an optional additional product.

- (b) Where a *banking customer* is required to obtain a particular category of additional product (for example, a particular type of insurance) in order to receive the *retail banking service*, and the *banking customer* is given a choice as to the seller or supplier from whom to obtain the product or which specific product to obtain, the product is an optional additional product.
- (9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or from another *person*.
- (10) A *borrower-lender agreement* enabling a *borrower* to overdraw on a current account, or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit, is not an optional additional product.
- (11) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *banking customer* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.
- (b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).
- (c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.
- (12) A *banking customer* may make an active election for the purposes of this *rule* through an intermediary in the sales process, or through a *person* acting on behalf of the *firm*.

2A.1.2 **G** An example of an omission by a *banking customer* which is not to be regarded as an active election is the failure by the *banking customer* to change a default option such as a pre-ticked box on a website.

2A.1.3 **G** *Firms* are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.

Chapter 3

Distance communications

3.1 Distance marketing

Application

- 3.1.1 **R** This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

The distance marketing disclosure rules

- 3.1.2 **R**
- (1) Subject to (2), a *firm* must provide a *consumer* with the distance marketing information (■ BCOBS 3 Annex 1 R) in good time before the *consumer* is bound by a *distance contract* or offer.
 - (2) Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of ■ BCOBS 3 Annex 1 R.

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

- 3.1.3 **R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in a way appropriate to the means of distance communication used with due regard, in particular, to the principles of good faith in commercial transactions and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[Note: article 3(2) of the *Distance Marketing Directive*]

- 3.1.4 **R** When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purposes of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

- 3.1.5 **R** A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

3.1.6 **R** A firm must communicate to the consumer all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (■ BCOBS 3.1.2R to ■ 3.1.5R) in a durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.

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

3.1.7 **G** A firm will provide information, or communicate contractual terms and conditions, to a consumer if another person provides the information, or communicates the terms and conditions, to the consumer on its behalf.

Commencing performance of the distance contract

3.1.8 **R** The performance of the distance contract may only begin after the consumer has given his approval.

[Note: article 7 (1) of the Distance Marketing Directive]

Exception: successive operations

3.1.9 **R** In the case of a distance contract comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the rules in this chapter only apply to the initial agreement.

[Note: article 1(2) of the Distance Marketing Directive]

3.1.10 **R** (1) If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure rules (■ BCOBS 3.1.2R to ■ 3.1.5R) will only apply:

- (a) when the first operation is performed; and
- (b) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: recital 16 and article 1(2) of the Distance Marketing Directive]

(2) In this section:

- (a) "initial service agreement" includes the opening of a bank account;
- (b) "operations" includes the deposit or withdrawal of funds to or from a bank account; and
- (c) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with an existing retail banking service, does not constitute an "operation" but an additional contract to which the rules in this chapter apply.

[Note: recital 17 of the Distance Marketing Directive]

Exception: voice telephony communications

- 3.1.11 **R** In the case of voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ BCOBS 3 Annex 2 R) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (■ BCOBS 3 Annex 1 R) in a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

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

Exception: means of distance communication not enabling disclosure

- 3.1.12 **R** A *firm* may provide the distance marketing information (■ BCOBS 3 Annex 1 R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(2) of the *Distance Marketing Directive*]

Exception: contracts for payment services

- 3.1.13 **G** Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in ■ BCOBS 3.1.2R (2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

Consumer's right to request paper copies and change the means of communication

- 3.1.14 **R** At any time during the contractual relationship, the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

- 3.1.15 **R**
- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of a reply not constituting consent.
 - (2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]

Mandatory nature of a consumer’s rights.....

3.1.16 **R** If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the *Distance Marketing Directive*]

Contracts governed by law of a third party state.....

3.1.17 **R** If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the territory of one or more *EEA States*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

3.2 E Commerce

Application

- 3.2.1 **R** This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.

Information about the firm and its products or services

- 3.2.2 **R** A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:
- (1) its name;
 - (2) the geographic address at which it is established;
 - (3) the details of the *firm* including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
 - (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes its Firm Reference Number;
 - (5) if it is a *professional firm*, or a person regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
 - (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the *E-Commerce Directive*]

- 3.2.3 **R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

- 3.2.4** **R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:
- (1) the commercial communication must be clearly identifiable as such;
 - (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
 - (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
 - (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

- 3.2.5** **R** An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 3.2.6** **R** A *firm* must (except when otherwise agreed by parties who are not consumers):
- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
 - (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means) acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
 - (4) make available to the *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and 11(1) and (2) of the *E-Commerce Directive*]

3.2.7 **R** For the purposes of ■ BCOBS 3.2.6R (3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

3.2.8 **R** Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e mail

3.2.9 **R** The requirements relating to the placing and receipt of orders (■ BCOBS 3.2.6R (3)) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: articles 10(4) and 11(3) of the *E-Commerce Directive*]

Distance marketing information

This Annex belongs to ■ BCOBS 3.1.2 R (The distance marketing disclosure rules)

Information about the firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *consumer's* EEA State of residence, the name of that representative and the geographical address relevant for the *consumer's* relations with that representative.
- (3) Where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional.
- (4) The particulars of the public register in which the *firm* is entered, its registration number in that register and the particulars of the relevant supervisory authority, including an appropriate statutory status disclosure statement (GEN 4), a statement that the *firm* is on the *Financial Services Register* and its Firm Reference Number.

Information about the financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
- (10) The arrangements for payment and performance.
- (11) Details of any specific additional cost to the *consumer* for using a means of distance communication.

Information about the contract

- (12) The existence or absence of a right to cancel under the cancellation rules (BCOBS 6) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.

- (16) The *EEA State* or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the contract.
- (17) Any contractual clause on the law applicable to the contract or on the competent court, or both.
- (18) In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.

Information about redress

- (19) How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to that body, together with equivalent information about any other applicable named complaints scheme.
- (20) Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

Abbreviated distance marketing information

This Annex belongs to ■ BCOBS 3.1.11 R

- (1) The identity of the *person* in contact with the *consumer* and his link with the *firm*.
- (2) A description of the main characteristics of the financial service.
- (3) The total price to be paid by the *consumer* to the *firm* for the financial service including all taxes paid via the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (4) Notice of the possibility that other taxes and/or costs may exist that are not paid via the *firm* or imposed by him.
- (5) The existence or absence of a right to cancel in accordance with the cancellation rules (BCOBS 6) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the basis of the cancellation rules.
- (6) That other information is available on request and what the nature of that information is.

[Note: article 3(3)(b) of the *Distance Marketing Directive*]

Chapter 4

Information to be communicated to banking customers

4.1 Enabling banking customers to make informed decisions

The appropriate information rule

4.1.1

R

A *firm* must provide or make available to a *banking customer* appropriate information about a *retail banking service* and any *deposit* made in relation to that *retail banking service*:

- (1) in good time;
- (2) in an appropriate medium; and
- (3) in easily understandable language and in a clear and comprehensible form;

so that the *banking customer* can make decisions on an informed basis.

4.1.2

G

- (1) In determining:
 - (a) what is "in good time";
 - (b) the appropriate medium for communicating information; and
 - (c) whether it is appropriate to provide information (that is, send or give it directly to the *banking customer*) or make it available (that is, make it available to obtain at the *banking customer's* option);

a *firm* should consider the importance of the information to the decision-making process of the *banking customer* and the time at which the information may be most useful. Distance communications requirements are also relevant.

- (2) For example, (unless ■ BCOBS 3 applies) a *firm* should provide the terms and conditions of the contract for a *retail banking service* on paper or in another *durable medium* in good time before a *banking customer* is bound by them.
 - (2A) (a) A *firm* should provide a summary box in the form set out in ■ BCOBS 2 Annex 1R on paper or in another durable medium in good time before a *banking customer* is bound by the terms and conditions of a *savings account*, except where the *firm* has already provided the summary box to a *banking customer* on a previous occasion.
 - (b) If the contract for the *savings account* has been concluded at a *banking customer's* request using a means of distance

communication that does not enable the provision of the summary box in that form in good time before the *banking customer* is bound, the *firm* should provide the summary box on paper or in another durable medium immediately after the conclusion of the contract.

- (c) In the case of a *savings account* that is a *cash deposit ISA*, *cash-only lifetime ISA* or a *cash deposit CTF*, the *firm* may include the summary box in a *key features document* provided to the *banking customer* in line with the *rules and guidance* in ■ COBS 13 and ■ COBS 14.
 - (d) In preparing the summary box, a *firm* should have regard to the provisions of ■ BCOBS 2.2A.1R as if they were *guidance*.
- (2B) A *firm* should ensure that the rate of interest that applies to a *savings account* is prominently shown alongside, or in close proximity to (or, in the case of (b), on a page accessed directly through a link that appears prominently alongside or in close proximity to) any account balance information included in:
- (a) any paper or online statement of account provided or made available by the *firm*;
 - (b) where the *firm* provides an online banking service to the *banking customer*, the first personalised page of the *firm's* website that the *banking customer* accesses when using this service;
 - (c) any notification of a material change to a rate of interest provided in accordance with (3)(c);
 - (d) any notification of the expiry of an introductory, promotional or preferential rate of interest provided in accordance with (5); and
 - (e) any notification of the expiry of a fixed term of a *fixed term savings account* provided in accordance with (6A).
- (2C) For the purposes of (2B):
- (a) (i) unless (ii) applies, the *firm* should show the rate of interest that applies to the *savings account* as a numerical figure (and not merely the method for determining the current figure under the terms and conditions);
 - (ii) where the rate of interest that applies to the *savings account* automatically tracks a reference interest rate (within the meaning of the *Payment Services Regulations*), the *firm* should indicate how the rate of interest is calculated and direct the *banking customer* to where the level of the reference interest rate may be accessed from time to time; and
 - (b) in the case of account balance information made available online, the *firm* should show the rate of interest that applies to the account at the time the *banking customer* accesses the information; or
 - (ii) in the case of account balance information provided in a *durable medium*, the *firm* should show the rate of interest that applies to the account at the time the information is sent.

- (2D) A *firm* should inform a *banking customer* of the current rate of interest that applies to a *savings account* on the telephone or in a branch of the *firm* at the request of the *banking customer*.
- (2E) A *firm* should publish the current rate of interest that applies to each *savings account* it provides on its website (whether or not the *savings account* is available to new customers) and ensure that this is kept continuously up to date and is easily accessible by a *banking customer*.
- (3) Where a *firm* proposes to exercise a power to make:
- (a) a change to any term or condition of the agreement; or
 - (b) a change to any charge; or
 - (c) a material change to any rate of interest;
- that applies to the *retail banking service* and that will be to the disadvantage of a *banking customer*, the *firm* should provide reasonable notice to the *banking customer* on paper or in another durable medium before the change takes effect, taking into account the period of notice required by the *banking customer* to terminate the contract for the *retail banking service*. A change to a rate of interest should always be considered 'material' except where the balance of the account is less than £100 at the time when the *firm* would provide the notice.
- (3A) When providing a notice under (3)(c), (5) or (6A), a *firm* should ensure that the heading of the notice clearly indicates the main substance of the change to which the notification relates. When providing a notice under (3)(c) relating to a decrease in the rate of interest, for example, a *firm* should ensure that the heading of the notice clearly indicates that the rate of interest is decreasing.
- (4) Where a *firm* notifies a *banking customer* of a material change to a rate of interest that applies to a *retail banking service* and that will be to the disadvantage of a *banking customer*, this notification should, where applicable:
- (a) refer to the fact that the *firm* offers a comparable *retail banking service* for which the *banking customer* is eligible;
 - (b) indicate that the *banking customer* may move to that *retail banking service* or a *retail banking service* provided by another *firm*; and
 - (c) indicate that the *firm* will assist the *banking customer* to move to another *retail banking service* if he wishes to do so.
- (5) Subject to (5A), where, under a contract for a *retail banking service*, an introductory, promotional or preferential rate of interest applies to the *retail banking service* until a specified future date or the end of a fixed period, a *firm* should provide notice of the expiry of the application of that rate of interest to the *banking customer* on paper or in another durable medium within a reasonable period before that rate of interest ceases to apply.
- (5A) Paragraph (5) does not apply where the balance of the account is less than £100 at the time when the *firm* would otherwise provide the notice.

(6) [deleted]

(6A) In relation to a *fixed-term savings account*, a *firm* should provide notice of the expiry of the fixed term to the *banking customer* on paper or in another durable medium in good time before the end of the fixed term. This notice should explain, in easily understandable language and in a clear and comprehensible form:

(a) the consequences of the expiry of the fixed term, including whether the *firm* proposes to transfer the balance of the account to another *fixed-term savings account* if the *banking customer* does not provide further instructions to the *firm* while the customer has an opportunity to do so; and

(b) the options available to the *banking customer* for dealing with the balance in the *fixed term savings account*, including when and how these options may be exercised.

(6B) Where a notice under (3)(c), (5) or (6A) is provided by the *firm* more than 14 days before the change to which the notice relates takes effect, a *firm* should also provide a reminder to the *banking customer* within a period beginning 14 days before the relevant change takes effect and ending on the day before it does so. The *firm* may choose the medium in which the reminder is provided. In doing so, the *firm* should take account of any preferences expressed by the *banking customer* about the medium of communication between the *firm* and the *banking customer*, for example, if the *banking customer* has indicated a preference to receive information by mobile telephone text message.

(7) The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to use or rely on a variation clause in a contract with a *consumer*.

4.1.3

R

Where a *rule* in this chapter requires information to be provided on paper or in another *durable medium* before a *banking customer* is bound by the terms and conditions of the contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see ■ BCOBS 3.1.11 R and ■ BCOBS 3.1.12 R).

4.1.4

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The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

(1) the *firm*;

(2) the different *retail banking services* offered by the *firm* which share the main features of the *retail banking service* the *banking customer* has enquired about, or which have the product features the *banking customer* has expressed an interest in, unless the *banking customer* has expressly indicated that he does not wish to receive that information;

- (3) the terms and conditions of the contract for a *retail banking service* and any changes to them;
- (4) the rate or rates of interest payable on any deposit, how and when such interest is calculated and applied and any changes to that rate or those rates;
- (5) any charges at any time payable by or on behalf of a *banking customer* in relation to each *retail banking service* and any changes to those charges;
- (5A) the time at which any funds placed with or transferred to the *firm* for credit to the *banking customer's* account will be made available to the *banking customer*;
- (6) a *banking customer's* rights to cancel a contract for a *retail banking service*;
- (7) how a *banking customer* may make a complaint (at the time and in the manner required by ■ DISP 1.2);
- (8) the terms of any compensation scheme if the *firm* cannot meet its obligations in respect of the *retail banking service*;
- (9) basic bank accounts but only if the *firm* offers a basic bank account and the *banking customer* meets the *firm's* eligibility criteria for such an account; and
- (10) the timescales for each stage of the cheque clearing process.

4.1.4A

G

- (1) This *guidance* applies to a *firm* only with respect to its *communications* and dealings with *consumers* where a *firm* has a *right of set-off*.
- (2) To ensure compliance with the appropriate *information rule*, the *firm* should:
 - (a) (i) provide an explanation of the nature and extent of the *firm's right of set-off*; and
 - (ii) if the *firm* considers that it is entitled to exercise a right to set off or combine a debt due solely from a *consumer*, or a debit balance on an account held in the sole name of a *consumer*, against or with a credit balance on an account held in the joint names of that *consumer* and another *consumer*, also provide an explanation of that right to the *consumers* in whose names the joint account is held;

in good time before the *consumer* is bound by the contract for the *retail banking service*. This information may be incorporated in the terms and conditions that apply to the contract for the *retail banking service*;
 - (b) (i) on the first occasion that the *firm* proposes to exercise a *right of set-off* in its dealings with the *consumer*; and

(ii) where appropriate, on any subsequent occasion that the *firm* proposes to exercise a *right of set-off* in its dealings with the *consumer*;

provide general information in relation to the nature of the *firm's right of set-off* and the generic circumstances in which the *firm* may rely on that right within a reasonable period before the *firm* seeks to exercise its *right of set-off*. The *FCA* considers that this information should be provided at least 14 days before the *firm* seeks to exercise its *right of set-off*. It may be incorporated in another communication sent by the *firm* to the *consumer*; and

(c) where it has exercised a *right of set-off*, provide prompt notification of this to the *consumer*. This notification should clearly identify the date that the *firm* exercised its *right of set-off* and the amount debited from the *consumer's* account in reliance on that right.

(3) The information referred to in (2) should be provided in plain and intelligible language on paper or in another *durable medium*.

(4) In determining whether it is appropriate to provide general information under (2)(b)(ii), the *firm* should consider the period of time that has elapsed since the *firm* last provided that information under (2)(b)(i) or (ii).

(5) Nothing in (2)(a)(ii) should be considered as expressing a view on the validity, enforceability or fairness of any *right of set-off* in relation to a joint account that a *firm* considers it is entitled to exercise.

4.1.5

G

The information required by the appropriate information *rule* may vary according to matters such as:

- (1) the *banking customer's* likely or actual commitment;
- (2) the information needs of a reasonable recipient having regard to the type of *retail banking service* that is proposed or provided and its overall complexity, main benefits, risks, limitations, conditions and duration;
- (3) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see ■ BCOBS 3.1)); and
- (4) whether the same information has been provided to the *banking customer* previously and, if so, when that was.

4.1.6

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The existence of cancellation rights does not affect what information it is appropriate to give a *banking customer* in order to enable him to make an informed purchasing decision.

4.1.7

G

If the *retail banking service* is a *cash deposit ISA*, *cash-only lifetime ISA* or a *cash deposit CTF*, the rules in ■ COBS 13.1 (Preparing product information) and ■ COBS 14.2 (Providing product information to clients) also apply.

4.2 Statements of account

4.2.1

R

- (1) A *firm* must provide or make available to a *banking customer* on paper or in another *durable medium* such regular statements of account as are appropriate to the type of *retail banking service* provided, but need not do so where:
 - (a) the *firm* has provided a *banking customer* with a pass book or other document in a *durable medium* that records transactions in relation to the *retail banking service*;
 - (b) the *retail banking service* is provided at a distance by means of electronic equipment where the *banking customer* can access his account balance, view transactions and give instructions in relation to the *retail banking service* at a distance by such means;
 - (c) a *banking customer* has elected not to receive periodic statements of account, and for so long as such election is in force; or
 - (d) it has reasonable grounds to believe that the *banking customer* is not resident at the address last known to it as the address of the *banking customer* and it is not practicable after reasonable inquiry to ascertain the *banking customer's* address.
- (2) A *firm* must not charge for providing information which is required to be provided by (1).
- (3) A *firm* must provide a *banking customer* with a true copy of any statement of account provided to him under (1) on paper or in another *durable medium* within a reasonable period of time following a request to that effect made by or on his behalf.
- (4) A *firm* and a *banking customer* may agree on a charge for:
 - (a) providing a copy of a statement of account under (3); or
 - (b) providing statements of account more frequently than required by (1);at the request of the *banking customer*. Any such charge must reasonably correspond to the *firm's* actual costs.

4.2.2

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A *firm* should indicate the rate or rates of interest that apply to a *retail banking service* in each statement of account provided or made available to a *banking customer* in respect of that *retail banking service* in accordance with ■ BCOBS 4.2.1R (1). *Firms* are also reminded of the provisions of ■ BCOBS 4.1.2G(2B) and (2C).



4.3 Information to be provided by a non ring-fenced body to individual account holders

Application and purpose

4.3.1 **G** Article 14 of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 “the Ring-fenced Bodies and Core Activities Order 2014” places a duty on the *FCA* to make *rules* specifying the information that a *non ring-fenced body* must provide to certain classes of individuals. The purpose of this section is to set out those *rules*.

4.3.2 **R** This section applies to a *firm* that is a *non ring-fenced body* or is to become a *non ring-fenced body*.

4.3.3 **G** A *non ring-fenced body* is a *firm* which has a *Part 4A permission* to carry on the *regulated activity* of *accepting deposits* and which is neither a *ring-fenced body* nor an institution which is exempt from the definition of a ring-fenced body. Section 142A(1) of the *Act* defines a ring-fenced body as a UK institution which carries out one or more core activities under section 142B of the *Act* for which it has a *Part 4A permission*. Section 142A(2) of the *Act* and the Ring-fenced Bodies and Core Activities Order 2014 provide that a *building society* and certain other classes of UK institution are exempt from this definition. Further, *firms* do not fall within the definition unless they hold *deposits* in *EEA accounts*.

To whom must information be provided?

- 4.3.4** **R**
- (1) A *firm* that is to become a *non ring-fenced body* must provide the information specified in **BCOBS 4.3.6R** to any individual from whom the *firm* proposes to accept, or contemplates it is likely to receive, a declaration of eligibility under article 9(1)(a) of the Ring-fenced Bodies and Core Activities Order 2014 (whether accompanied by a *confirming statement* or not).
 - (2) A *firm* that is a *non ring-fenced body* must provide the information specified in **BCOBS 4.3.6R** to:
 - (a) any individual who has applied to open an *EEA account* for the purpose of making one or more *deposits* (including a joint account) with that *firm*; and
 - (b) any individual who holds an *EEA account* for that purpose (including a joint account) with that *firm*,

except where the *firm* has already provided that information to the individual on a previous occasion.

- 4.3.5** G A request made by an individual to switch to an *EEA account* with a *firm* is to be regarded as an application to open an *EEA account* with that *firm* (it is immaterial if the switch is from an account held with a *ring-fenced body* in the same group as the *firm* or whether the existing account will be closed when the switch is complete).

What information must be provided?

- 4.3.6** R The information required to be provided by ■ BCOBS 4.3.4R is:

- (1) a summary of the purpose of the provisions of Part 9B of the Act (Ring-fencing) and of the key risks to which a *non ring-fenced body* may be exposed which distinguish it from a *ring-fenced body*;
- (2) a description of any *excluded activity* which the *firm* is carrying on or (for information provided before the date on which Part 9B of the Act comes fully into force) a description of any activity the *firm* is carrying on which would, if carried on after that date, be an *excluded activity*; and
- (3) a description of any *prohibited action* which the *firm* has taken or (for information provided before the date on which Part 9B of the Act comes fully into force) a description of any action the *firm* has taken which would, if taken after that date, be a *prohibited action*.

- 4.3.7** G (1) The summary described in ■ BCOBS 4.3.6R(1) should include a brief explanation that the purpose of ring-fencing is to separate the retail banking activities, on which households and small businesses depend, from wholesale or investment banking activities which may involve a greater degree of risk and expose an entity undertaking those activities to financial problems arising elsewhere in the global financial system.

It should also indicate that certain *ring-fenced bodies* carrying on retail banking activities will have to comply with restrictions on the other activities they can undertake, and with rules made by the *appropriate regulator* intended to ensure that they are capable of carrying on the business of providing the core services related to the acceptance of *deposits* independently of other members in their group. They will, for example, not be able to carry on activities called 'excluded activities' which make them vulnerable to problems arising in the financial system or which may make it more difficult for banks to be wound down in an orderly fashion. The summary should explain that, as a *non ring-fenced body*, the *firm* is not subject to these restrictions.

- (2) It is not necessary for the information provided under ■ BCOBS 4.3.6R(2) and (3) to contain an exhaustive list of each specific activity or action that constitutes an *excluded activity* or *prohibited action*, so long as the information about the nature of the activities and actions is sufficient to enable the individual to make an informed decision as to whether to open or continue to hold an

account with the *firm* in the light of its status as a *non ring-fenced body*.

When must the information be provided?

- 4.3.8 **R**
- (1) The information required to be provided under ■ BCOBS 4.3.4R(1) must be provided in good time before the individual becomes an *eligible individual* in relation to the *firm*.
 - (2) The information required to be provided under ■ BCOBS 4.3.4R(2)(a) must be provided in good time before the individual opens an account with the *firm*.
 - (3) The information required to be provided under ■ BCOBS 4.3.4R(2)(b) must be provided as soon as practicable after the *firm* has become a *non ring-fenced body*.

4.3.9 **G** In determining what is “in good time” under ■ BCOBS 4.3.8R, the *firm* should consider the time at which the information may be most useful to the individual in making a decision as to whether to continue to hold or to open an account with the *firm*.

How must the information be provided?

- 4.3.10 **R** The information required under ■ BCOBS 4.3.4R must be provided:
- (1) in writing;
 - (2) in a prominent manner and in a medium that is calculated to bring the information to the attention of the individual to whom it is addressed; and
 - (3) in easily understandable language and in a clear and comprehensible form,

so that the individual can make a decision as to whether to continue to hold or to open an account with the *firm* on an informed basis.

4.3.11 **R** A *firm* must not charge for providing the information required to be provided by ■ BCOBS 4.3.4R.

Requirement to publish the information on a website

4.3.12 **R** A *firm* must, on or before the first date it is required to provide information under ■ BCOBS 4.3.4R, make the information in ■ BCOBS 4.3.6R accessible continuously on its website and keep such information up to date.

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** To the extent that it relates to a *retail banking service*, a *firm* may find it helpful to take account of the British Bankers' Association "A Statement of Principles: Banks and businesses - working together".

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 accounts

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

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

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

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 £50 for losses in respect of unauthorised payments arising:
- (a) from the use of a lost or stolen *payment instrument*; or
 - (b) where the *banking customer* has failed to keep the personalised security features of the *payment instrument* safe, from the misappropriation of the *payment instrument*.
- (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

R

- (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

R

- (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

R

- (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; and
 - (b) the *firm* must make reasonable efforts to recover the funds involved in the transaction.
- (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.

5.1.16

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.

Chapter 6

Cancellation

6.1 The right to cancel

Introduction

6.1.1 **R** Except as provided for in **BCOBS 6.1.2 R**, a *banking customer* has a right to cancel a contract for a *retail banking service* (including a *cash deposit ISA* but excluding a *cash-only lifetime ISA*) without penalty and without giving any reason, within 14 calendar days.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

6.1.2 **R** There is no right to cancel:

- (1) a contract (other than a *cash deposit ISA*) where the rate or rates of interest payable on the *deposit* are fixed for a period of time following conclusion of the contract;
- (2) a contract whose price depends on fluctuations in the financial market outside the *firm's* control that may occur during the cancellation period; or
- (3) a *cash deposit CTF* (other than a *distance contract*).

6.1.3 **G** A *firm* may provide longer or additional cancellation rights voluntarily but, if it does, these should be on terms at least as favourable to the *banking customer* as those in this chapter, unless the differences are clearly explained.

6.1.3A **G** *Firms* are reminded that the cancellation *rules* in **COBS 15** apply to the cancellation by a *banking customer* of a *cash-only lifetime ISA*.

Beginning of cancellation period

6.1.4 **R** The cancellation period begins:

- (1) either from the day of the conclusion of the contract for the *retail banking service*; or
- (2) from the day on which the *banking customer* receives the contractual terms and conditions of the *retail banking service* and any other pre-contractual information required under this sourcebook, if that is later than the date referred to in (1) above.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to *distance contracts*]

Disclosing the right to cancel

6.1.5

R

- (1) The *firm* must disclose to a *banking customer* in good time or, if that is not possible, immediately after the *banking customer* is bound by a contract for a *retail banking service*, and in a *durable medium*, the existence of the right to cancel, its duration and the conditions for exercising it including information on the amount which the *banking customer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which the notification of cancellation should be sent.
- (2) This *rule* applies only where a *banking customer* would not otherwise receive the information referred to in (1) under a *rule* in this sourcebook from the *firm* (such as under ■ BCOBS 3.1.2 R to ■ 3.1.5 R (the distance marketing disclosure rules)).



6.2 Exercising the right to cancel

6.2.1 **R** If a *banking customer* exercises his right to cancel he must, before the expiry of the cancellation period, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a *durable medium* available and accessible to the recipient, is dispatched before the cancellation period expires.

[Note: article 6(6) of the *Distance Marketing Directive* for distance contracts]

6.2.2 **G** The *firm* should accept any indication that the *banking customer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *banking customer* as the date when the notification was dispatched.

Record keeping

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

6.3 Effects of cancellation

- 6.3.1 **R** By exercising a right to cancel, a *banking customer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

- 6.3.2 **R**
- (1) This *rule* applies in relation to a contract for a *retail banking service* that is not a *cash deposit ISA* or a *cash deposit CTF*.
 - (2) When a *banking customer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
 - (b) in any case be such that it could be construed as a penalty.
 - (3) The *firm* may not require a *banking customer* to pay any amount on the basis of this *rule* unless it can prove that the *banking customer* was duly informed about the amount payable and, in the case of a contract which is a *distance contract*, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before expiry of the cancellation period without the *banking customer's* prior request.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

6.4 Obligations on cancellation

Firm's obligation

- 6.4.1 **R** The *firm* must, without undue delay and within 30 calendar days, return to the *banking customer* any sums it has received from him except for any amount that the *banking customer* may be required to pay under ■ BCOBS 6.3.2 R. This period begins from the day on which the *firm* receives the notification of cancellation.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive* in relation to *distance contracts*]

Banking customer's obligation

- 6.4.2 **R** The *firm* is entitled to receive from the *banking customer* any sums or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period begins from the day on which the *banking customer* dispatches the notification of cancellation.

[Note: article 7(5) of the *Distance Marketing Directive* in relation to *distance contracts*]

- 6.4.3 **R** Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.



6.5 Other applicable legislation

6.5.1

R

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

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BCOBS TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
1	BCOBS	R	Expired		
1A	BCOBS 2A.1.1R(1) to (3)	R	<p>A <i>firm</i> need not comply with BCOBS 2A.1.1R(1) to (3) in relation to an automatic renewal of an agreement for an optional additional product which was entered into on or before 31 March 2016 provided:</p> <p>(1) the automatic renewal of the agreement is on substantially the same terms. The phrase “on substantially the same terms” is to be interpreted in the same way as in BCOBS 2A.1.1R(11)(b) and (c);</p> <p>(2) on the occasion of the first automatic renewal on or after 1 April 2016, the <i>firm</i> takes reasonable steps to ensure that the <i>banking customer</i> is informed:</p> <p>(a) that the renewal of the agreement is optional;</p> <p>(b) that the <i>banking customer</i> may elect not to renew the agreement; and</p> <p>(c) of the effect of the non-renewal of the agreement, if any, on the <i>retail banking service</i>; and</p> <p>(3) the procedure to be used by <i>banking customers</i> for electing not to renew the agreement pays due regard to the interests of those <i>banking customers</i> and treats them fairly.</p>	From 1 April 2016	On 1 April 2016
1B	BCOBS 2.2A, BCOBS 2 Annex 1R and, BCOBS 4.1.2G(2A)	R	This provision applies where a <i>firm</i> has in its possession, as at the date the Banking: Conduct of Business Sourcebook (Amendment No 4) Instrument 2015 is made, a stock of <i>direct offer financial promotions</i> on paper or a stock of pre-sale material on paper that incorporate a summary box that meets the standards in the ‘Industry Guidance for FCA Banking Conduct of Business Sourcebook’ of September 2013, confirmed by the FCA in accordance with PS07/16, as it stood as at 3 December 2015.	1 December 2016 to 31 May 2017	1 December 2016

1C	BCOBS 2.2A, BCOBS 2 Annex 1R and BCOBS 4.1.2G(2A)	R	Where BCOBS TP 1B applies, until 31 May 2017, the <i>direct offer financial promotion</i> or pre-sale material referred to in 1B may be treated by the <i>firm</i> as including a summary box in the form set out in BCOBS 2 Annex 1R that complies with the rules in BCOBS 2.2A.	1 December 2016 to 31 May 2017	1 December 2016
2	BCOBS 4.1.1 R	R	Expired		
3	BCOBS 4.1.1 R	G	Expired		
4	BCOBS 4.1.1 R	R	Expired		
5	BCOBS 5.1.13 R	R	Expired		
6	BCOBS 4.1.1 R	R	Expired		
7	BCOBS 4.2.2 G	R	Expired		

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Schedule 1 Record-keeping requirements

Sch 1

Notes:

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record-keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	When record must be made	Contents of record	Retention period
BCOBS 6.2.3 R	Cancellation: exercise of right	Exercise of the right to cancel	Date of exercise	At least three years

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Schedule 2 Notification requirements

Sch 2

There are no requirements for notification in *BCOBS*.

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Schedule 3 Fees and other required payments

Sch 3

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

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Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

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Schedule 5 Rights of action for damages

Sch 5

5.1	The table below sets out the <i>rules</i> in <i>BCOBS</i> contravention of which by an <i>authorised person</i> may be actionable under Section 138D of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.
5.2	If a "Yes" appears in the column headed "For private person?", the <i>rule</i> may be actionable by a <i>private person</i> under Section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the <i>FCA</i> has removed the right of action under Section 138D(3) of the <i>Act</i> . If so, a reference to the <i>rule</i> in which it is removed is also given.
5.3	The column headed "For other person?" indicates whether the <i>rule</i> may be actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of <i>person</i> by whom the <i>rule</i> may be actionable is given.

Rule	Right of action under section 150			Any other person
	For private person?	Removed?	For other person?	
Any rule in <i>BCOBS</i> which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability	Yes	No	Yes	
All other rules in <i>BCOBS</i>	Yes	No	No	

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Schedule 6 Rules that can be waived

Sch 6

6.1

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

