

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.

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

