
Editorial

A Draft 'Banking Code'

A Review Committee on Banking Services Law was set up in January 1987 under the chairmanship of Professor RB Jack. According to the Committee's report, published in February 1989 (Cm 622), the factors which led to the review were the growth of new technology, the increasingly international scope of banking, the de-regulation of banking services, and the increasing formalisation of banker-customer relationships. The Report noted, among other things, moves by the European Commission to promote electronic banking in the run up to 1992. Its central recommendation was to call for the promulgation of a voluntary code of practice, to operate in conjunction with the banking and building societies ombudsman schemes, and paying particular attention to the growing business of electronic funds transfer.

The Jacks Committee's main proposals were accepted in principle by the Government in a White Paper

published in March 1990 (Cm 1026). The task of drafting the code was entrusted to a committee involving the British Bankers' Association, the Building Societies Association and the Association for Payment Clearing Services, under the chairmanship of Sir George Blunden, a former deputy governor of the Bank of England. The draft code – which would apply to all UK banks and building societies as well as to big retailers issuing plastic cards – was published in December, with a three month period allowed for comment.

Launching the 23-clause draft Code, Sir George himself admitted that it contained nothing startlingly new, being based, according to its authors, on existing best practice. Thus it exhorts banks and other lenders to be discriminating in the use of direct mailing, to guard against encouraging young borrowers to take on loans that they cannot afford, to be particularly careful when dealing with minors, to be more "transparent" in their

arrangements for levying charges. It recommends that holders of cash dispenser and debit cards be liable only for the first £50 in the event of loss – save in the event of "negligence" – thus bringing the rules applicable to such cards into line with those relating to credit cards. The National Consumer Council, who gave a lukewarm welcome to the Code, pointed to the absence of a clear definition of negligence as one of a number of significant weaknesses.

The Code is certainly welcome as far as it goes; it will be a useful adjunct to existing ombudsman machinery. However, there are continuing problems – notably "hidden" charges, wayward cash dispensers, and excessive lending – which surely demand more substantial remedies. The continuing growth of electronic banking, which in so many ways works to the benefit of the customer, at the same time also poses serious threats to consumer interests. The draft Code illustrates the sad truism that "best practice" is all too often synonymous with complacency.
