CODE OF BANKING PRACTICE

JAMES WATKINS

Linklaters & Paines, Solicitors, Hong Kong

The first United Kingdom Code of Banking Practice was published, in the form of a booklet entitled "Good Banking", in December 1991 and became effective on 16 March, 1992. The Code stated that it would be reviewed from time to time and at least every two years, and indeed the second edition was duly issued in March 1994 and became effective on 28 March, 1994.

The UK Code is broadly similar in the scope of its coverage to the Australian Code, but in terms of content it bears greater resemblances to the New Zealand Code. The Australian Code is written in more technical or legalistic language, and I suggest the average customer may find it a little harder to follow than the UK or New Zealand Code.

The UK Code, in both its original and revised form, states that it "sets out the standards of good banking practice to be observed by banks, building societies and card issuers in their relations with personal customers in the United Kingdom". The original version of the Code contained the somewhat disingenuous statement that "Any of those institutions may observe higher standards if they wish". This statement was removed from the second edition of the Code, but replaced by the statement, which may be merely ingenuous, that "It is a voluntary code which allows competition and market forces to operate to encourage higher standards for the benefit of customers".

I cannot help feeling that the Code is something of an optical illusion. It actually imposes very few substantive obligations on the banks and other financial institutions who are bound by it. Its main effect is to require banks to provide more information to their customers, and promote a greater awareness of the services offered and the terms and conditions on which those services are provided. It imposes very few requirements in relation to the content of those terms and conditions.

For example, paragraph 4 of the Code requires that the written terms and conditions of a banking service "will be expressed in plain language and will provide a fair and balanced description of the relationship between the customer and the bank". Note that the only thing which is required to be fair and balanced is the description of the relationship and not the relationship itself.

To take another example, banks are required to provide customers wishing to effect cross-border payments with details of the services they offer, which are to include:

(a) a basic description of the services and the manner in which they can be used;

(b) information as to when money sent abroad will usually reach its destination.

There is, however, no substantive requirement as to the manner in which cross-border transactions will be effected and no requirement for a maximum period within which such transactions must be fulfilled.

Whilst expressed in more technical terms, the Australian Code goes little further than the UK Code in imposing specific requirements on banks in relation to the services they provide. It does, however, contain valuable provisions in one particular area which were excluded from the UK Code. These are the provisions which require that guarantees be limited to specific amounts, and which entitle a guarantor to extinguish his or her liability under a guarantee by paying to the bank the total amount then owing by the principal debtor.

It would not be fair for me to conclude, however, that the introduction of the UK Code has not produced some positive benefits. It has introduced into banks an awareness of the need for greater openness in dealing with their customers. Banks now provide much more information about the levels of bank charges and the basis on which they are imposed. On the credit side, banks now give their customers more information about the different types of deposit accounts available, and encourage customers to take advantage of those deposit schemes conferring the most advantage to their customers.

The Code has imposed substantive obligations on banks in relation to losses suffered from wrongful use of credit cards, and in particular wrongful use of cashpoint cards. The effect is in general to provide card holders with absolute protection as long as they are not themselves responsible for the misuse, and as long as they give to the card issuers prompt notice of any loss or theft of a card.

Finally, the introduction of the Code has been very useful in requiring banks to set up their own internal complaints procedures which have at least ensured customers of a hearing of their complaints. The Code also "expects" banks to belong to the Banking Ombudsman Scheme or some other similar scheme, and in fact some 39 banks representing some 40,000,000 customers and 99 per cent of all individuals holding personal bank accounts in the United Kingdom have become members of the UK Banking Ombudsman Scheme.

The Banking Ombudsman Scheme has in fact been in existence in the United Kingdom since 1986, since when it has grown from a six-man office to its present complement at 30 September, 1993, of 44 persons with an annual budget of £2.3 million. In the year to 30 September, 1993, the Ombudsman's Office received a total of 10,231 complaints against its member banks, an increase from 1,682 in its first year of operation.

The scheme has been subject to some criticism in the United Kingdom, most particularly on the grounds of its lack of independence from its member banks and its lack of statutory powers. A committee was established under the chairmanship of Professor Robert Jack in 1989, whose principal recommendation was that the voluntary scheme should be replaced by a statutory scheme. This recommendation was, however, not accepted.

I believe the general body of opinion in the United Kingdom is that the scheme is operating successfully. There is, I believe, a genuine feeling that member banks have responded to actual determinations made by the Ombudsman in response to complaints received by him, and have endeavoured to improve the standard of their services so as to eliminate causes of complaint.