

# THE BUILDING SOCIETY CODE OF PRACTICE

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# BUILDING SOCIETY CODE OF PRACTICE

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## **PREAMBLE**

The Building Society Code of Practice (the Code) seeks to foster good relations between the Building Society and its Customers (as defined below) and to promote good practice by formalising standards of disclosure and conduct which the Building Society agrees to observe when dealing with its Customers.

## **Objectives**

The Code is intended to:

- (i) describe standards of good practice and service;
- (ii) promote disclosure of information relevant and useful to Customers;
- (iii) promote informed and effective relationships between the Building Society and its Customers; and
- (iv) require the Building Society to have procedures for the resolution of disputes between the Building Society and its Customers.

## **Principles**

These objectives are to be achieved:

- (i) consistently with the current law, in a manner that preserves certainty of contract between the Building Society and its Customer and consistently with the Financial Institutions Legislation and the prudential standards issued by the Australian Financial Institutions Commission; and
- (ii) having regard to the requirement for the Building Society to act in accordance with its Rules; and
- (iii) in a manner which permits flexibility in the provision and pricing of products and services.

## **Monitoring**

The Australian Payments System Council may obtain from the Reserve Bank of Australia consolidated information based on reports and information provided by the Building Society so that the Australian Payments System Council may provide reports to the Treasurer of the Commonwealth on compliance with the Code and its general operation.

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The Reserve Bank of Australia will receive each year from the Building Society:

- (i) a report on the operation of the Code; and
- (ii) information concerning the number of disputes referred to in sections 20.3 and 20.4 of the Code, according to their categories and how each of these categories of disputes has been handled.

The information to be provided by the Building Society to the Reserve Bank of Australia will be determined by the Reserve Bank of Australia with the Building Society. Before such determination, the Reserve Bank of Australia will consult with the Australian Payments System Council.

### **Review**

The Code shall be reviewed at least every three years in accordance with the Objectives and the Principles set out in this Preamble and having regard to the views of interested parties.

### **Staff Training**

The Building Society must endeavour to ensure that its staff are aware of the provisions of this Code relevant to their duties and of the procedures for handling disputes with Customers.

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This Code is in three parts:

- (i) **Part A - Disclosures.** This part describes the information which the Building Society will provide to a Customer in respect of the Services which the Building Society offers to the Customer.
- (ii) **Part B - Principles of Conduct.** This part describes certain principles of conduct which the Building Society will follow in dealing with its Customers.
- (iii) **Part C - Resolution of Disputes.** This part requires the Building Society to have dispute handling procedures which include access by its Customers to an external and impartial dispute resolution mechanism.

### 1.0 DEFINITIONS AND APPLICATION

1.1 In this Code and the Preamble:

"**Account**" includes, among others, a cheque account or an account accessible by cheque.

"**Building Society**" means a body which is authorised to operate as a Building Society under the Financial Institutions Code 1992.

"**Customer**" means an individual, whether alone or jointly with another individual, to whom the Building Society provides a Service wholly and exclusively for his or her personal, domestic or household purposes, but does not include an individual who declares to the Building Society that the Service is to be provided wholly or predominantly or partly for business or investment purposes (or for both purposes). The declaration may but need not be in the form prescribed by the Consumer Credit Regulations.

"**Financial Institutions Legislation**" has the meaning given by section 8 of the Australian Financial Institutions Code.

"**guarantee**" or "**indemnity**" does not include a mortgage obtained from a third party for the purpose of securing any financial accommodation or facility provided by the Building Society to a person.

"**Related Body Corporate**" has the meaning set out in Section 9 of the Corporations Law.

"**Rules**" mean the rules of the Building Society as registered pursuant to the Financial Institutions Legislation.

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**"Service"** means a deposit, loan or other banking facility provided by the Building Society to a Customer.

It does not include:

- a product or service in relation to a bill of exchange; or
- an insurance or financial planning product or service; or
- a "one-off" service which is not or is not likely to be provided on an ongoing basis; or
- a travel service; or
- a lease facility; or
- a variation of a term or condition of a facility; or
- the provision of credit without prior agreement between the Building Society and the Customer; or
- a loan for investment purposes such as, but not limited to, a residential investment loan, an equity loan or a mortgage secured investment loan.

**"Standard Fees and Charges"** mean the fees and charges normally charged by the Building Society to its Customers in respect of a Service at a particular time, but does not include:

- interest rates; or
- government fees and charges that are not passed on by the Building Society to its Customers; or
- fees and charges payable in connection with a credit contract under which both credit and debit facilities are available.

**"Terms and Conditions"** mean those terms and conditions specifically applied by the Building Society to a Service, but does not include any other terms and conditions that may apply by operation of law.

- 1.2 This Code is to be read subject to any Commonwealth, State or Territory legislation.
- 1.3 From the date on which the Building Society publicly announces that it adopts this Code:

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- (a) that Building Society will be bound by this Code in respect of any Service that the Building Society commences to provide to a Customer; and
  - (b) that Building Society will be bound by this Code other than sections 2.1, 2.2, 2.3, 7.1 and 16.1 to 16.7 inclusive in respect of any Service it is then providing to a Customer; and
  - (c) the Building Society will be bound by Sections 11.1 to 11.11 of this Code in respect of any information it holds at that time in relation to a Customer.
- 1.4 To the extent of any inconsistency, this Code is to be read subject to the Electronic Funds Transfer Code of Conduct, which governs transactions on an account initiated through an electronic terminal by the combined use of a card and a personal identification number.

## PART A : DISCLOSURES

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### 2.0 DISCLOSURE : TERMS AND CONDITIONS

2.1 The Building Society must provide to a Customer any Terms and Conditions applying to an ongoing Service provided by the Building Society to the Customer. Where appropriate those Terms and Conditions will be in writing. The Terms and Conditions must:

- (i) be distinguishable from marketing or promotional material;
- (ii) be in English and any other language the Building Society considers appropriate;
- (iii) be consistent with this Code;
- (iv) be clearly expressed;
- (v) be provided at the time of or before the contract for the Service is made except where it is impracticable to do so, in which case the Terms and Conditions must be provided as soon as practicable after the provision of the Service; and
- (vi) draw attention to the availability of the general information referred to in sections 6.1 and 6.2.

2.2 Any written Terms and Conditions referred to in section 2.1 must include a statement to the effect that the relevant provisions of this Code apply to the Service but need not set out those provisions.

2.3 The Building Society must include (where relevant) the following in its Terms and Conditions applying to a Service:

- (i) a general description of all Standard Fees and Charges that then apply;
- (ii) the method by which interest, if any, is calculated and the frequency with which it will be credited or debited;
- (iii) the manner in which the Customer will be notified of changes to the Terms and Conditions, interest rates and Standard Fees and Charges;
- (iv) if relevant, the fact that more than one interest rate may apply;
- (v) any minimum balance requirement or restriction on depositing money in, or withdrawing money from, an Account;
- (vi) in respect of term deposits:

## PART A : DISCLOSURES

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- the manner in which payment of interest and principal will be made;
  - the manner in which funds may be dealt with at maturity; and
  - the nature of any charge or variation to an interest rate resulting from a withdrawal in advance of maturity;
- (vii) in respect of a loan to the Customer, the repayment details;
- (viii) the frequency with which statements of Account will be provided;
- (ix) a statement that information on current interest rates and Standard Fees and Charges is available on request; and
- (x) how a Customer or the Building Society may alter or stop a payment service.

### **3.0 DISCLOSURE : COST OF CREDIT/INTEREST RATES ON DEPOSITS**

- 3.1 The Building Society must make available to a Customer or an appropriate external agency the interest rates and Standard Fees and Charges applicable to a Service offered by the Building Society for use in the preparation of a comparison rate.

### **4.0 DISCLOSURE : STANDARD FEES AND CHARGES**

- 4.1 The Building Society must before or at the time of providing a particular Service to a Customer for the first time (where that occurs on or after the date referred to in Section 1.3) or otherwise on request by a Customer, make available to the Customer a schedule containing the Standard Fees and Charges which currently apply to the Service.

### **5.0 DISCLOSURE : PAYMENTS SERVICES**

- 5.1 Where the Building Society provides a Customer with a direct debit or credit payment service, an automatic payment service or access to an account by means of instruction via telephone or personal computer, the Building Society must make available to the Customer details of any Standard Fees and Charges applying to the service.

### **6.0 DISCLOSURE : OPERATION OF ACCOUNTS**

- 6.1 The Building Society must provide to a Customer, upon request, general descriptive information concerning the Services, including where appropriate:

## PART A : DISCLOSURES

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- (i) Account opening procedures;
- (ii) the Building Society's obligations regarding confidentiality of information referred to in Section 11.1 and the Customer's right to instruct the Building Society in accordance with section 11.2 (b) not to disclose information to a Related Body Corporate of the Building Society and the means by which that instruction can be given, such as by marking a box in an application form;
- (iii) complaint handling procedures;
- (iv) the Building Society's right to combine Accounts;
- (v) bank cheques;
- (vi) the advisability of a Customer promptly informing the Building Society when the Customer is in financial difficulty; and
- (vii) the advisability of a Customer reading the Terms and Conditions applying to the Service.

6.2 The Building Society must provide to a Customer who opens an account accessible by cheque and to other Customers on request, general descriptive information on:

- (i) the time generally taken for clearing a cheque and how a cheque may be specially cleared;
- (ii) the effect of crossing a cheque, the meaning of "not negotiable" and "account payee only" and the significance of deleting "or bearer" when any of these expressions appear on a cheque;
- (iii) how and when a cheque may be stopped;
- (iv) how a cheque may be made out so as to reduce the risk of unauthorised alteration; and
- (v) the dishonour of cheques including post-dated and stale cheques.

## PART B : PRINCIPLES OF CONDUCT

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### 7.0 PRE-CONTRACTUAL CONDUCT

- 7.1 The Building Society must have readily available any Terms and Conditions of each Service it currently offers to Customers.
- 7.2 The Building Society must disclose the existence of any application fee or charge and whether the fee or charge is refundable if the application is rejected or not pursued.
- 7.3 Where a fee or charge is levied by the Building Society for the provision of a bank cheque, a travellers cheque, a transfer or the like service, the Building Society must disclose the fee or charge to a Customer upon request when the service is provided or at any other time.

### 8.0 OPENING OF ACCOUNTS

- 8.1 The Building Society must provide to a Customer upon request general descriptive information (which may consist of or include material made available by a government) about the identification requirements of the Financial Transaction Reports Act 1988 (Cth) and the options available to the Customer under tax file number legislation.

### 9.0 VARIATIONS TO TERMS AND CONDITIONS

- 9.1 Subject to sub-section 9.3, if the Building Society intends to introduce a fee or charge (other than a government charge referred to sub-section 9.4), or change the manner in which interest is calculated, or change the frequency with which interest is credited to a deposit account, or change the frequency of repayments under a credit contract, the Building Society must provide written notice of the change to the Customer. The notice must be given at least 30 days before the change takes effect, except where the frequency of repayments is being changed, in which case the notice need only be given at least 20 days before the change takes effect.
- 9.2 If the Building Society intends to introduce a fee or charge (other than the government charge referred to in sub-section 9.4), then instead of giving 30 days written notice, the Building Society may elect to notify the Customer of the change by advertisement in national or local media. However, if the Building Society elects to do so, it will confirm that the change has occurred at the time it next corresponds with the Customer after the change takes effect.
- 9.3 If a change of a kind referred to in sub-section 9.1 results in a reduction in the obligations of the Customer, then notice of the change is **not** required to be given.

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However, except for a change in the manner in which interest is calculated, the Building Society will confirm that the change has occurred at the time it next corresponds with the Customer after the change takes effect.

- 9.4 The Building Society may notify the Customer of the introduction or change of a government charge payable directly or indirectly by the Customer, by advertisement in the national or local media or in writing to the Customer.
- 9.5 Subject to sub-section 9.6, the Building Society must notify the Customer of other changes to the Terms and Conditions (including a change of an interest rate or a change to the Standard Fees and Charges), no later than the day on which the change takes effect, by written notice to the Customer or by advertisement in the national or local media.
- 9.6 If a change of a kind referred to in sub-section 9.5 results in a reduction in the obligations of the Customer (eg. a reduction in the interest rates), then notice of the change is **not** required to be given. However, except for a change of an interest rate, the Building Society will confirm that the change has occurred at the time in next corresponds with the Customer after the change takes effect.
- 9.7 Unless otherwise agreed, the Building Society may give any written notice to a Customer at his or her mailing address that was last recorded with the Building Society. The Building Society may require a Customer to notify the Building Society promptly of a change to his or her name or address.
- 9.8 If the Building Society considers there are sufficient changes to warrant doing so, the Building Society will make available a consolidation of the Terms and Conditions applying to a Service.
- 9.9 Section 9 does not apply to the following changes under a credit contract:
- (a) a change in an interest rate that is determined by referring to a reference rate, provided the changed reference rate is notified (whether or not by the Building Society) by advertisement in the national or local media not later than the date the change takes effect;
  - (b) a change to a new interest rate payable under the credit contract if both the new rate and when it takes effect are ascertainable from the credit contract;
  - (c) an increase in the amount of repayments, if the increase occurs automatically, as specified by the credit contract and both the amount of the increase and when it takes effect are ascertainable from the credit contract; and
  - (d) an increase in the term of the credit contract, if the increase occurs only because of an increase in the interest rate or rates payable under the credit contract.

## **PART B : PRINCIPLES OF CONDUCT**

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### **10.0 ACCOUNT COMBINATION**

- 10.1 The Building Society may only combine two or more Accounts held by a Customer with the Building Society if it has a contractual or other legal right to do so or if the Customer consents to the Building Society combining the Accounts.
- 10.2 On or after the date referred to in Section 1.3, the Building Society must promptly inform a Customer if it combines two or more Accounts held by the Customer with the Building Society.
- 10.3 If the Building Society combines the Accounts, it must comply with any applicable requirements of the Code of Operation for Social Security Direct Credit Payments.

### **11.0 PRIVACY AND CONFIDENTIALITY**

- 11.1 In addition to the Building Society's duties under legislation such as the Privacy Act 1988 (Cth), the Building Society and its staff will take reasonable steps to maintain the confidentiality of a Customer's account details. In circumstances where, among other things, a Customer has impliedly or expressly consented to the disclosure of the account details or if the Building Society is compelled or authorised under law to disclose the account details, the Building Society will be entitled to disclose the account details.
- 11.2 The Building Society may disclose:
- (a) to a Related Body Corporate of the Building Society such information concerning the Customer as may be necessary to enable an assessment to be made of the total liabilities (present and prospective) of the Customer to the Building Society and the Related Body Corporate, and
  - (b) to a Related Body Corporate of the Building Society which provides financial services which are related or ancillary to those provided by the Building Society, information concerning the Customer unless the Customer instructs the Building Society not to do so. The Building Society must advise those Customers who are provided with Services on or after the date referred to in Section 1.3 that they have the right to give this instruction by the means referred to in section 6.1(ii).
- 11.3 The Building Society must not collect information relating to Customers by unlawful means.
- 11.4 The Building Society must on request provide a Customer with information about that Customer which is readily accessible to the Building Society and which may

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lawfully be provided. The information required to be provided is limited to the Building Society's record of the Customer's address, occupation, marital status, age, sex, Accounts with the Building Society and balances and statements relating to those Accounts (in this section 11 called "Customer information").

- 11.5 The Building Society need not comply with a request under section 11.4 unless the Customer has, as clearly as possible, identified the Customer information requested and its likely location (if known to the Customer).
- 11.6 The Building Society may recover its reasonable costs of supplying Customer information to a Customer.
- 11.7 A Customer of the Building Society may request the correction of Customer information about the Customer held by the Building Society and, if the Building Society is satisfied that the relevant information is incorrect, it will make the requested correction.
- 11.8 A request for access to Customer information, or a request for the correction of Customer information, must be dealt with in a reasonable time.
- 11.9 The Building Society may not collect, use or disseminate information about a Customer's:
- (i) political, social or religious beliefs or affiliations;
  - (ii) race, ethnic origins or national origins; or
  - (iii) sexual preferences or practices,
- except that it may collect or use such information in accordance with this Code for a proper commercial purpose.
- 11.10 The Building Society must take reasonable steps to protect personal information held by it relating to a Customer against loss and against access, use, modification or disclosure that is unauthorised.
- 11.11 The Building Society must comply with any applicable requirements of any Credit Reporting Code of Conduct issued by the Privacy Commissioner under section 18A(1) of the Privacy Act 1988 (Cth).

### **12.0 PAYMENT INSTRUMENTS**

- 12.1 The Building Society may inform a Customer of the advisability of safeguarding payment instruments such as credit and debit cards, cheques and pass books.

## **PART B : PRINCIPLES OF CONDUCT**

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- 12.2 The Building Society may require a Customer to notify the Building Society as soon as possible of the loss, theft or misuse of his or her payment instruments.
- 12.3 The Building Society must inform the Customer of or provide the Customer with general descriptive information about:
- (i) the consequences arising from a failure by the Customer to comply with any requirement referred to in section 12.2 that is imposed on the Customer by the Building Society; and
  - (ii) the means by which the Customer can notify the loss, theft or misuse of his or her payment instruments.

### **13.0 STATEMENTS OF ACCOUNT**

- 13.1 At least every six months, the Building Society must provide a Customer with a record of all transactions relating to a deposit account of the Customer since the previous statement unless:
- (i) a passbook is provided or it is agreed that other documentation will be the record of transactions on the deposit account;
  - (ii) there has been no transaction effected by the Customer on the deposit account during the past six months; or
  - (iii) the deposit account can be accessed by the combined use of a PIN and an EFT card (in which case the requirements of the Electronic Funds Transfer Code of Conduct apply).

### **14.0 PROVISION OF CREDIT**

- 14.1 In considering whether to provide a Service involving the provision of credit to a Customer, the Building Society will take into account the range of factors it considers are relevant to the Customer and the Service to establish whether, in the Building Society's view, the Customer has or may have in the future the capacity to repay. These factors may include:

## **PART B : PRINCIPLES OF CONDUCT**

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- (i) the Customer's income and expenditure;
- (ii) the purpose for which the Service is to be used;
- (iii) credit scoring (being a scoring method used by the Building Society to assess whether a credit applicant is an acceptable risk); and
- (iv) the Customer's assets and liabilities.

### **15.0 JOINT ACCOUNTS AND SUBSIDIARY CARDS**

15.1 The Building Society must provide to Customers opening a joint Account general descriptive information on:

- (i) how funds may be withdrawn from the joint Account having regard to the instructions given by the Customers;
- (ii) the manner in which such instructions can be varied; and
- (iii) the nature of liability for indebtedness on joint account.

15.2 When accepting a Customer's instructions to issue a subsidiary credit or debit card, the Building Society must:

- (i) provide general descriptive information to the primary cardholder on his or her liability for debts incurred by the subsidiary card holder by use of the card; and
- (ii) inform the primary card holder of the means by which a subsidiary card may be cancelled or stopped and the fact that this may not be effective until the subsidiary card is surrendered.

### **16.0 GUARANTEES**

16.1 This section shall apply to each guarantee and each indemnity (called "guarantee" in this section 16) obtained from a third party who is an individual (called "the guarantor" in this section 16) for the purpose of securing any financial accommodation or facility provided by the Building Society to any person (called "the borrower" in this section 16) other than:

- (i) a corporation or any of its Related Bodies Corporate;
- (ii) a corporation of which the guarantor is a director, secretary or member or any of its Related Bodies Corporate;

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- (iii) a trustee of a trust (including a discretionary trust) of which the guarantor or a corporation or a Related Body Corporate that is referred to in paragraph (ii) is a beneficiary or one of a class of beneficiaries under the trust; and
- (iv) a partner, co-owner, agent, consultant or associate of any of the guarantor, a corporation or Related Body Corporate referred to in paragraph (ii) or a trustee referred to in paragraph (iii),

at the time the guarantee is obtained. The term "corporation" has the meaning set out in section 9 of the Corporations Law.

- 16.2 Subject to sub-section 16.3, the Building Society will only accept a guarantee if the amount of the guarantor's liability is limited to, or is in respect of, a specific amount plus other liabilities (such as interest and recovery costs) that are described in the guarantee or the credit contract to which the guarantee relates.
- 16.3 Despite sub-section 16.2, a guarantee may contain a provision that makes credit provided under a future credit contract subject to the guarantee. However, the guarantor will not be liable for any amount in relation to such future credit contract unless:
- (i) the Building Society gives the guarantor a copy of the contract document of that future credit contract; and
  - (ii) the Building Society obtains from the guarantor his or her written acceptance of the extension of the guarantee.
- 16.4 The Building Society must provide to a prospective guarantor:
- (i) a written warning about the possibility of the prospective guarantor becoming liable instead of, or as well as, the borrower (and for this purpose, an information statement about guarantees in the form prescribed by the Consumer Credit Regulations will constitute sufficient written warning to a prospective guarantor); and
  - (ii) a copy or summary of the credit contract or proposed credit contract to which the guarantee relates or is to relate.
- 16.5 The Building Society must recommend that a prospective guarantor obtain independent legal advice.
- 16.6 Subject to obtaining the consent of the affected borrower, the Building Society must send to a guarantor:
- (i) a copy of any formal demand that is sent to the borrower; and

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- (ii) on request by the guarantor, a copy of the latest relevant statements of account provided to the borrower, if any.

16.7 A guarantor may at any time extinguish the guarantor's liability to the Building Society under a guarantee by paying to the Building Society the then outstanding liability of the borrower to the Building Society (including any future or contingent liability) or any lesser amount to which the liability of the guarantor is limited by the terms of the guarantee or by making other arrangements satisfactory to the Building Society for the release of the guarantee.

### **17.0 ADVERTISING**

17.1 The Building Society must ensure that its advertising and promotional literature drawing attention to a Service is not false or misleading.

17.2 In any advertising in the print-media and any promotional literature that draws attention to a Service and includes a reference to an interest rate, the Building Society must also indicate whether any fees and charges are payable and that full details of the relevant Terms and Conditions are available on application.

### **18.0 CLOSURE OF ACCOUNTS**

18.1 Subject to the terms and conditions of any relevant financial service, the Building Society:

- (i) will upon request by the Customer close an Account of the Customer that is in credit;
- (ii) may close an Account of the Customer that is in credit by giving the Customer notice that is reasonable in all the relevant circumstances and repaying the Customer the amount of the credit balance; and
- (iii) may charge the Customer an amount that is a reasonable estimate by the Building Society of the costs of closure.

## PART C : RESOLUTION OF DISPUTES

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### 19.0 NOMINATION FOR NOTICES AND OTHER DOCUMENTS

- 19.1 When the Building Society provides a Service to two or more Customers jointly and the Customers reside at the same address, one may be nominated by them to receive notices and other documents on behalf of both or all of them. In that event, a notice or other document given to that one is taken to have been given to both or all of them. Such a nomination remains effective until the Building Society is notified in writing that one or more of the Customers no longer reside at the same address. The nomination may but need not be in the form prescribed by the Consumer Credit Regulations.

### 20.0 DISPUTE RESOLUTION

- 20.1 The Building Society must have an internal process for handling a dispute between the Building Society and a Customer and this process will be readily accessible by Customers without charge upon them by the Building Society. A dispute arises where the Building Society's response to a complaint by a Customer about a Service provided to that Customer is not accepted by that Customer.
- 20.2 The Building Society must have available in branches general descriptive information on:
- (i) the procedures for handling such a dispute;
  - (ii) the time within which the dispute will normally be dealt with by the Building Society; and
  - (iii) the fact that the dispute will be dealt with by an officer of the Building Society with appropriate powers to resolve the dispute.
- 20.3 Where a request for resolution of the dispute is made in writing or the Customer requests a response from the Building Society in writing, the Building Society must promptly inform the Customer in writing of the outcome and, if the dispute is not resolved in a manner acceptable to the Customer, of:
- (i) the reasons for the outcome; and
  - (ii) further action the Customer can take, such as the process for resolution of disputes referred to in section 20.4.
- 20.4 The Building Society must have available for its Customers free of charge an external and impartial process (not being an arbitration) for the resolution of a dispute that is not resolved in a manner acceptable to the Customer by the internal process referred to in section 20.1 and which concerns an alleged contravention of this Code.

