

code of practice

**bills of sale for consumer lending regulated
under the consumer credit act 1974**

(‘the act’) (as amended from time to time)

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1 consumer credit trade association ('the association') and this code

- 1.1** The Association represents finance houses, retailers, building societies, credit-brokers, professional firms, debt collection companies, hire and leasing companies and others operating in the consumer credit industry.
- 1.2** This Code is specific to those members who engage in the use of Bills of Sale for Consumer Lending regulated under the Consumer Credit Act 1974 ('the Act') (as amended from time to time).
- 1.3** The purpose of this Code is to ensure compliance by members with the minimum standards set by the Association, as specified in this Code.
- 1.4** The Association and its members shall publicise the existence of this Code and, where appropriate, provide details of the Complaints Procedure.

2 monitoring and compliance

- 2.1** The Association, through its Council, shall monitor the compliance of members with this Code and will require members to submit to Annual Compliance Audits (ACA's), at the full expense of the individual member, as a condition of membership of the Association. The Association or any other authorised person(s) will conduct the ACA's at any of the member's premises at which the member carries on the relevant business.
- 2.2** Members shall promptly notify the Chief Executive or other officer nominated by the Council from time to time, of any conduct that comes to their attention of any member or any other person engaging in Bills of Sale for Consumer Lending, which is not consistent with this code and which might adversely affect the reputation of the consumer credit industry in the United Kingdom or of the Association.
- 2.3** The Association will record all incidences of reported misconduct, including misconduct identified through Annual Compliance Audits, and will make those records available to the Financial Conduct Authority (FCA).

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- 2.4** The Association, through its Council, may take action against any member found to be in breach of this Code. Such action may, without limitation, include unscheduled compliance audits, written warnings, requests for written explanations and meetings to discuss, and where possible, to resolve the matter.
- 2.5** The ultimate sanction, which the Association may impose, is the suspension or expulsion of a member from the Association. The Association will also promptly notify the FCA of any members who they suspend or expel and the reasons why.

3 general obligations

- 3.1** Members shall conduct their business lawfully and in accordance with:
- A)** all relevant legislation and in particular the Consumer Credit Act 1974 ("CCA 1974") and the Financial Services and Markets Act 2000 ("FSMA") and relevant orders and regulations under those Acts;
 - B)** relevant parts of the FCA Handbook, in particular the Principles for Businesses ("PRIN") and the Consumer Credit sourcebook ("CONC");
 - C)** this code and other relevant codes of practice, judicial decisions, and general rulings and directions of the FCA.
- 3.2** Have in place and maintain written Business Practices and Procedures which reflect the overarching principles of consumer protection and fair business practice as outlined in the relevant parts of the FCA Handbook (as amended from time to time).
- 3.3** Trade honestly, responsibly, ethically and pay due regard to the interests of their customers and treat them fairly.
- 3.4** Behave at all times with integrity and endeavour to ensure, where applicable, that credit-brokers and or intermediaries and all other persons with whom the member has commercial relationships do likewise.

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- 3.5** Act responsibly and with care in the day-to-day conduct of their business.
- 3.6** Not misrepresent facts, including by act or omission, to a customer concerning any aspect of a credit transaction. Members shall also take all reasonable steps to ensure, where applicable, that brokers and any other intermediaries, when acting, as agents of the member, do not misrepresent facts, including by act or omission, regarding such transactions to a customer.
- 3.7** Respect confidential information supplied to them in the course of their business.
- 3.8** Ensure that credit documentation embodies, in plain and intelligible language, all the express terms and conditions of the agreement that affect the customer's rights and obligations.
- 3.9** Provide adequate training for members of their staff, agents, associates and any other person who performs any duties on behalf of the member, bringing this Code and the principles contained in it to their attention and requiring them to carry out their duties in accordance with it.
- 3.10** Comply with obligations and any conditions, which may be imposed by the FCA with regard to their FCA authorisation or permission/s.
- 3.11** Follow, where applicable, any requests conveyed by the Association and emanating from the Bank of England, the FCA (or other relevant supervisory authority).
- 3.12** Follow, where applicable, any guidance notes issued by the Association, which refer to this Code.
- 3.13** Ensure fairness in all dealings with customers including, but not limited to, their dealings with customers both before and after the making of the agreement or any related agreement and the manner in which those agreements are enforced.
- 3.14** Ensure that the member's interest in the assigned vehicle is registered, within 24 hours of the making of the agreement, with an industry recognised Asset Finance Register such as, without recommendation, HPI Ltd. Members must also ensure that:
- A)** Registration does not take place prior to the making of the agreement:

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- B)** Registration is not to be removed until such time as the members interest in the assigned vehicle has been lawfully extinguished; and
 - C)** Upon the members interest being lawfully extinguished, registration is removed as soon as practicably possible.
- 3.15** Provide, on request, the Industry Borrower Information Sheet to any interested prospective Customer and in any event shall be provided, at all times, to the Customer at the same time as Pre-contractual information (PCI) is provided.

4 specific obligations

4.1 FINANCIAL PROMOTIONS AND COMMUNICATIONS WITH CUSTOMERS

- 4.1.1** Members shall not use direct mail indiscriminately or where it may be inappropriate (e.g. because the consumer has indicated that he does not wish to receive mail or because the credit would be clearly unsuitable), shall act responsibly and prudently in their advertising and marketing and ensure that all their advertising, promotional materials and customer communications are clear, fair and not misleading.
- 4.1.2** Members shall ensure that all advertising and promotional literature and communications with customers comply with all relevant rules and, in particular, with CONC and the provisions of the Consumer Credit Act 1974. This includes the inclusion and disclosure of the 'APR' and/or the representative example in the statutory form, where required by law.
- 4.1.3** Members shall ensure that all advertising complies with the British Code of Advertising, Sales Promotion and Direct Marketing, the Radio Advertising Standards Code, the Television Advertising Standards Code, OFCOM and other relevant codes of practice of similar standing.
- 4.1.4** Members shall not engage in high-pressure selling or other aggressive sales practices such as pressurising a customer to sign up to a credit agreement without affording him adequate opportunity to consider the Pre-contract information, ask questions about the agreement and ask for and obtain further information and explanation.

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- 4.1.5** All advertising carried out by members shall carry and prominently display the CCTA logo or reference to being CCTA members. In addition, all members shall prominently display this Code of Practice on their websites and will make it available on request to interested customers.
- 4.1.6** In this entire code and in particular this clause 4.1, "financial promotions" includes every form of advertising including Internet Websites and includes every form of financial promotion, whether in a publication, by television or radio, by display of notices, signs, labels, show-cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly.

4.2 RESPONSIBLE LENDING

- 4.2.1** Members shall engage in responsible lending.
- 4.2.2** Where members make available agreements comprising a balloon payment option representing the full loan amount (also known as the principal), members agree to make that option available only where their customer is proposing to enter into the agreement wholly or predominantly for their business purposes (a business carried on or intended to carry on). Where that is the case, members agree:
- A)** to offer both balloon and capital repayment options to the customer and to provide adequate explanations of the key features and risks of each of the agreement options in order to place the customer in a position enabling him to assess which agreement (if any) is adapted to his needs and his financial situation.
Freedom shall be given to the customer to select the payment option that is best suited to his needs and financial situation;
 - B)** to carry out reasonable specific assessments of affordability in order to establish from the customer that sufficient funds will be available by him to repay the loan in a sustainable manner and in full at the end of the contractual term;
 - C)** that where credit is granted to customer on the basis of a balloon payment option, the term of the agreement shall not exceed 12 months. In addition, any subsequent agreement entered into with such customers, as a result of their inability to pay the final balloon payment on the earlier agreement, will be repayable by periodical capital and interest repayments of an amount not greater than the amount of the periodical interest only payments in the earlier agreement.

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4.3 EXPLANATIONS OF THE CREDIT PRODUCT

- 4.3.1** In good time before the customer is bound by any credit agreement or offer, members shall provide the customer with the Pre-contractual information (PCI) document by means of the form required by law at that time. Members shall explain to the customer that they may take away the PCI to consider the terms of the offer of credit before the making of the agreement and the customer should be afforded such an opportunity.
- 4.3.2** Members shall provide adequate explanations of the credit on offer to the customer in order to place the customer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation by explaining, but not limited to:
- A)** the Pre-contractual information to be provided;
 - B)** the risk, on default of the agreement, that additional interest and default fees may be charged and the amount or likely amount of such interest/fees;
 - C)** the risk of losing the asset (usually a vehicle) on which the credit is secured, how it would be repossessed, and the loss this could entail;
 - D)** that repossession under the Bill of Sale can take place without a court order and that members may enter customer's premises, where reasonably necessary, to take possession of the vehicle;
 - E)** that repossession can result in significantly higher additional costs and may not clear all of the debt owed; and
 - F)** that there is a provision for voluntary surrender of the asset and the terms and conditions which apply.
- 4.3.3** Where a member has clear grounds to suspect that the explanation provided has not placed the customer in a position to assess whether the agreement is suited to his needs and his financial situation (e.g. whereby he has not understood the explanation provided or key aspects of it), members shall provide further explanation to the customer.

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4.3.4 In all circumstances members should provide the customer with an opportunity to ask questions about the proposed credit agreement (i.e. before entered into). Members should also advise the customer how to ask for further information and explanation about the credit agreement.

4.4 ASSESSMENT OF AFFORDABILITY

4.4.1 Members shall, before granting credit or increasing the amount of credit to be provided to the customer, undertake an assessment of the creditworthiness of the customer and his ability to undertake the proposed credit commitment, or specific additional credit commitment, in a sustainable manner, without the customer incurring financial difficulties and/or experiencing adverse consequences. Members shall take all reasonable steps in this respect and have special regard for the requirements prescribed in CONC.

4.4.2 The assessment of affordability should be based on information and evidence obtained from:

- A)** the customer, having provided evidence of his ability to repay the credit; and
- B)** a credit reference agency, where necessary.

4.4.3 Members shall take particular care in relation to applications for credit from young people in the age range of 18-21 years.

4.4.4 Members shall continuously monitor their credit granting practices and procedures and their assessment techniques to ensure that they are prudent and realistic in the prevailing economic circumstances. They shall not be less rigorous in assessing the customer's ability to repay in a sustainable manner by reason of the fact that a security is offered.

4.4.5 To the extent that a member may use credit-scoring techniques, members shall abide by the principles set out in the publication "Guide to Credit Scoring 2000", as subsequently amended or updated. Where members do not use credit-scoring techniques they should make it clear to a declined applicant whether or not the refusal to grant credit relates to a credit reference agency report.

4.4.6 Members shall ensure that where a customer is refused credit and the customer believes the refusal to be unreasonable the customer is given the name or title of a senior official who will review the application.

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4.4.7 Members shall provide appropriate assistance, in the form of information and guidance, to young (as defined in 4.4.3) and/or vulnerable customers.

4.5 THE REGULATED CONSUMER CREDIT AGREEMENTS

4.5.1 Members shall use plain and intelligible language in all agreements, Pre-contract information documents and communications with customers. Members shall use prescribed wording where that is required by law.

4.5.2 Members shall ensure that their agreements (and any related agreements) with consumers do not contain unfair contract terms.

4.5.3 Members shall advise customers of the contractual interest rate(s) applicable to their agreements for credit, the basis on which default interest and charges, repossession charges and any other charges are calculated and, when they will be charged.

4.5.4 Members shall advise customers how any agreed variation of the terms and conditions of their agreement will be notified and shall give customers at least 14 clear days written notice before any variation takes effect.

4.5.5 Members shall comply with all statutory and other reasonable requests by customers for information about their agreements and accounts within 14 days of receiving a written request or otherwise within the period specified by law.

4.5.6 Members shall supply copies of documentation and statements of account as required by law and within the prescribed timescales.

4.5.7 Members must observe the customers right under s66A of the Act to withdraw from the credit agreement without giving any reason, within 14 days beginning with the relevant day under that section.

Where the agreement is an excluded agreement as specified under s66A(14) of the Act, members must observe the customers right of cancellation provided under s67 of the Act and take into account the Tribunal's (Consumer Credit) decision that agents' or brokers' premises do not necessarily constitute premises at which lenders carry on business (on a temporary basis) for the purposes of section 48(2)(a) and/or section 67(1)(b)(i) of the Act.

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4.5.8 Members, where applicable, shall comply with their legal obligations in relation to the provision of Pre-contractual information and the 14 day right of cancellation in respect of distance contracts under the Financial Services (Distance Marketing) Regulations 2004.

4.6 GUARANTEES AND BILLS OF SALE

4.6.1 GUARANTEES

4.6.1.1 Members shall advise individuals proposing to give a guarantee or other security for a customer's liability that:

- A)** by giving the guarantee or security he or she might become liable for payment of the loan amount instead of or in addition to customer; and
- B)** he or she should seek independent legal advice before entering into the guarantee or security.

4.6.1.2 Members shall be deemed to have complied with the requirements of 4.6.1.1 where guarantees and other securities contain a clear and prominent notice to the above effect.

4.6.2 BILLS OF SALE

4.6.2.1 Members shall comply fully with the requirements of the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882 and, where applicable, the Bills of Sale (Ireland) Act 1879 and the Bills of Sale (Ireland) Act (1879) Amendment Act 1883.

4.6.2.2 Members shall, in accordance with the relevant Bills of Sale Acts, register every Bill of Sale in the Central Office of the applicable Court within 7 clear days of execution of the Bill. The effective date of registration is the date shown on the official court stamp.

4.7 DEALING WITH CUSTOMERS EXPERIENCING FINANCIAL DIFFICULTIES

4.7.1 Members shall establish and implement policies and procedures for dealing with customers whose accounts fall into arrears. Those policies and procedures should be fair, clear and not misleading and Members shall have due regard to CONC in relation to those policies and procedures.

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- 4.7.2** Any policies and procedures for dealing with customers whose account falls in arrears shall make specific provision for, amongst other matters, the fair and appropriate treatment of vulnerable customers such as those known to or reasonably believed to lack the mental capacity to make relevant financial decisions.
- 4.7.3** Members shall consider cases of financial difficulty sympathetically and positively, treat customers in default or arrears difficulties with understanding, forbearance and due consideration and encourage their customers to contact them should they experience financial difficulty.
- 4.7.4** Members shall, where appropriate, refer customers to debt counselling organisations and notify customers where they can get free advice, such as, but not limited to, Citizens Advice, Money Advice Service, National Debtline, StepChange Debt Charity. Members will work with debt counselling organisations to assist their customers.
- 4.7.5** Members shall suspend, for a period of not less than 30 days, the active pursuit of recovery of a debt from a customer in default or payment difficulties under circumstances in which a bona fide debt advisor is assisting the customer in agreeing a repayment plan.
- 4.7.6** If a member passes a customer's account to another person to collect overdue payments, such as a debt collector or solicitor, the member will inform the customer. Members will always choose debt collection firms that agree to abide by this Code or the Credit Services Association Code and are Authorised and regulated by the FCA.
- 4.8 ENFORCEMENT AND DEBT COLLECTION**
- 4.8.1** Members shall have due regard to CONC in relation to enforcement and debt collection procedures and in particular shall not engage in any unfair or improper business practices identified in CONC or other FCA sourcebooks.
- 4.8.2** Members shall ensure, by reviewing annually their debt collection procedures and those of any third parties they employ, that they conform to high ethical standards and allow for proper consideration of the customer's circumstances and in particular:
- A)** encourage customers in financial difficulties to inform them of their difficulties at the earliest possible moment (and members will endeavour to respond sympathetically, without prejudice to members' rights);

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- B)** provide in all relevant correspondence the name or title of a specially trained member of staff who may be contacted if difficulties arise; and
- C)** take into consideration, before determining whether to enforce an agreement, all information supplied by the customer or otherwise in relation to the cause of any default and the customer's future ability to repay in a sustainable manner. If the customer has disclosed multiple debt problems, members shall inform the customer of the availability of free impartial debt advisory services.
- 4.8.3** Members should suspend the pursuit of recovery of a debt from a borrower, under circumstances in which notification has been given and/or it is reasonably believed that the borrower lacks the mental capacity to make relevant financial decisions regarding the management of his debt at that time, unless or until a reasonable period of time has been allowed for relevant evidence to be provided as to the likely impact of the capacity problem on the borrower's ability to manage his debt and deal with a debt recovery business. The appropriate means of collecting evidence, in appropriate circumstances, could be to use the standard Debt and Mental Health Evidence Form (DMHEF), developed between MALG and the Royal College of Psychiatrists.
- 4.8.4** Members shall not impose charges, of whatever nature, on customers who are in arrears unless the nature of and likely amount of those charges are disclosed at the Pre-contract stage and are limited to doing no more than covering the member's reasonable costs.
- 4.8.5** Members shall allow for alternative, affordable, payment amounts when the borrower or his appointed debt advisor or representative makes a reasonable proposal.
- 4.8.6** Members shall regard the lawful seizure of a secured asset as a serious enforcement option, to be taken only when attempts of have failed with the customer, to mutually agree a realistic and sustainable arrangement to clear arrears.
- 4.8.7** Members should not, except in exceptional circumstances such as proven identity fraud, consider seizure of the vehicle unless:
- 1)** the amount of the customers arrears shortfall is no less than the equivalent of:
 - A)** the sum of the last two payments required to have been made, under a monthly paid agreement, before that time; or

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- B)** the sum of the last four payments required to have been made, under a weekly paid agreement, before that time; and
 - 2)** the requirements of section 86B (Notice of Sums in Arrears) of the Act have been complied with prior to serving a Default Notice under section 87 (1) of the Act.
- 4.8.8** Notwithstanding the provisions of the relevant Bills of Sale Acts members shall, upon the lawful seizure of the vehicle, hold the vehicle in safe keeping for a period of not less than 14 days to allow the customer to make representations to resolve the matter or to make application to the court under the applicable Bills of Sale Act to restrain the member from selling the vehicle. Members shall take all reasonable steps to ensure that seized vehicles are sold for the highest obtainable market price.
- 4.8.9** Members shall not apply for a charging order on the customers home (the property) to secure an outstanding debt, except under the following circumstances:
- A)** the outstanding debt is no less than £500 and, for whatever reason, a member is unable, following all reasonable attempts, to gain lawful possession of the assigned vehicle; or
 - B)** the outstanding debt is no less than £500 and 'bad faith' by the customer is shown, which includes; intent to deceive or mislead a member to gain some advantage, dishonesty or fraud in the transaction.
- 4.8.10** Where members have obtained a charging order under 4.8.10 (a) or (b), those members shall not seek an order of the court for the sale of the judgments debtors home.
- 4.8.11** Members shall allow customers who are in arrears under the agreement, the option to voluntary surrender the assigned vehicle as full and final settlement of all claims against the customer except where:
- A)** a default notice has been served under s87 of the Act, the default notice remains unsatisfied and instructions have already been issued to an authorised person to recover the vehicle; or
 - B)** it is established that the vehicle has sustained malicious damage of whatever nature; or

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- C)** it is evident that the customer has contravened his/her obligation to take reasonable care of the vehicle to the extent that the contravention adversely and significantly effects the resale value.

Members shall provide the customer with information on the voluntary surrender option at the Pre-contract information stage and at the time a default notice is served. Members shall not place undue pressure on the customer to adopt this option.

5 third party purchasers

- 5.1** Members shall afford innocent purchasers of vehicles, that are subject to a Bill of Sale, the same protection as afforded under the Hire-Purchase Act 1964 Part III - 'Title to Motor Vehicles on Hire-Purchase or Conditional Sale', but only insofar as title shall transfer to the innocent purchaser in the event that the Member failed to register his interest in that vehicle with a relevant Asset Finance Register Company within 24 hours of execution of the agreement.

6 debt collection agencies

- 6.1** Members shall ensure that any Debt Collection Agencies they employ shall be authorised persons under FSMA or the appointed representatives of authorised persons.
- 6.2** Members shall monitor those Debt collection agencies and take reasonable steps to ensure they comply with the Consumer Credit Act 1974, the FSMA, regulations under those Acts, CONC, this code and other relevant codes of practice.

7 data protection and confidentiality of information

- 7.1** Members shall respect personal information supplied to them by customers and shall inform customers of the purposes for which this information is intended to be used and disclosed, before it is given by the customer.

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7.2 Members shall observe a strict duty of confidentiality about their customers (and former customers) personal financial affairs and shall not disclose details of customers accounts or their names and addresses to any third party, except for the purposes of filing with credit reference agencies and in the following cases:

- A)** where they are legally compelled to do so;
- B)** where there is a duty to the public to disclose;
- C)** where the interests of the member requires disclosure;
- D)** where disclosure is made at the request, or with the consent, of the customer.

Members shall not use exception (c) above to justify the disclosure for marketing purposes of details of customers' accounts or their names and addresses to any third party, including other companies within the same group.

7.3 Members who use the services of credit reference agencies and/or fraud prevention agencies shall ensure that any information they supply about customers and the conduct of their accounts to credit reference agencies and/or fraud prevention agencies is complete and accurate.

7.4 Members shall at all times comply with the Data Protection Act 1998 when obtaining and processing customers' personal data and shall explain to their customers that they have the right of access, under that Act, to their personal records held on computer files.

7.5 Members shall advise customers of their right not to receive marketing information from the member or a third party with whom the member is connected. Members shall comply in that regard with the requirements of the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

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8 complaints procedure

8.1 GENERAL

8.1.1 Members shall deal promptly and at an appropriate management level with complaints. Members shall establish a complaints procedure and furnish information on request about their complaints procedure. Customers shall be told what further steps are available if they believe that the complaint has not dealt with satisfactorily. These steps include the complaint being referred to a senior manager of the Member, to the CCTA and the ultimate resort of the unresolved complaint being referred to the Financial Ombudsman Service (FOS).

8.2 CUSTOMER COMPLAINTS

The following shall apply to complaints made by member's customers to the Association in relation to customer transactions.

- 8.2.1** If a customer makes a complaint to the Association in relation to an account or an agreement with a member, the Association shall, in the first instance, refer the complaint to a senior executive of the member, for consideration.
- 8.2.2** If the complaint is not resolved to the customer's satisfaction the Association (through an appropriate representative) shall endeavour to conciliate between the customer and the member to restore communication between the customer and the member where communications have broken down. The Association shall accept, for conciliation, complaints made against members and subsidiary companies of members.
- 8.2.3** Where a complaint cannot be resolved by conciliation, the customer shall be advised of their right to seek resolution through the Financial Ombudsman Service.
- 8.2.4** Nothing in this Code restricts or is intended to restrict the rights of a customer or a member to pursue remedies through the Courts or the Financial Ombudsman Service.

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8.2.5 The conciliation scheme shall not be invoked where a customer's complaint has already been considered under a dispute resolution scheme of other relevant Codes of Practice or of the Financial Ombudsman Service or where the complaint has been the subject of a judicial decision.

8.2.6 Members shall notify customers of their complaints procedure, including the customer's right to seek resolution of the complaint under the Conciliation Scheme and the Financial Ombudsman Service.

9 prevention of fraud and money laundering

9.1 Members shall satisfy themselves about the identity of a person seeking to enter into an agreement or to open an account, to assist in protecting their customers, members of the public and themselves against fraud and money laundering.

9.2 Members shall establish, maintain and implement fraud prevention and anti-money laundering procedures and client identification procedures and train their staff in operating such procedures.

9.3 Members shall comply with all relevant legislation and guidance relating to the prevention of fraud, money laundering and client identification including relevant Money Laundering Regulations and rules and guidance issued by the FCA and by The Joint Money Laundering Steering Group.

10 interpretation

10.1 In this Code reference to Acts or Regulations shall be construed as such Acts or Regulations respectively, as amended or re-enacted from time to time. "Regulations" include orders and statutory instruments.

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11 formal procedures

- 11.1** The Council may make such changes to this Code, as it may consider appropriate from time to time, by a majority of the members of the Council present and voting. In the event of an equality of votes the Chairman of the Council shall have a casting vote in addition to the vote to which he is entitled as a member of the Council.
- 11.2** The Council shall give members at least 30 days notice in writing of any changes to this Code.

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