

Code Compliance Monitoring Committee

Inquiry into Bank compliance with clause 25.2 of the Code

December 2005

In July 2005 the Code Compliance Monitoring Committee (“the Committee”) established an Inquiry into bank compliance with clause 25.2 of the Code of Banking Practice (“the Code”). Clause 25.2 states:

“With **your** agreement, **we** will try to help **you** overcome **your** financial difficulties with any credit facility **you** have with **us**. **We** could, for example, work with **you** to develop a repayment plan. If, at the time, the hardship provisions of the Uniform Consumer Credit Code could apply to **your** circumstances, **we** will inform **you** about them”.

Clause 25.2 of the Code requires banks to take positive steps to try to assist customers in financial hardship. This obligation was introduced with the Code and although banks may already have been doing so, the Code made it a contractual obligation.

Executive Summary

The Committee is pleased with the overall commitment of banks to the letter and spirit of the Code as evidenced by the Inquiry. The Committee found ample evidence that the reviewed banks understand and take seriously their obligations under the Code.

Generally, the Committee finds that the banks that took part in the Inquiry are committed to meeting their obligations under clause 25.2 and have specific processes for dealing with customers in financial difficulties. Most banks have a separate area to deal with customers experiencing both temporary and long term financial difficulties. There appears to be a general appreciation of the benefits to both customer and bank of seeking to understand and in the process “rehabilitate” a customer suffering financial hardship.

The Committee values the continuing efforts of all the banks involved in the Inquiry to discharge their Code obligations effectively and to work continuously towards improving industry standards.

The Committee has however identified some areas of concern that have arisen out the Inquiry in relation to clause 25.2 and other related clauses, and will

continue to work with the relevant banks to reach an agreed understanding of what is required by the Code.

Methodology

Five banks, representing a cross section of the industry, were chosen for the Inquiry.

The Committee engaged Roger Knight, formerly Head of Compliance at the Banking Code Standards Board in the UK to assist with the Inquiry. Each bank was required to provide comprehensive documentation, covering areas such as training, terms and conditions and standard collections letters, for review. Mr Knight and the CEO of the Committee undertook compliance visits to each of the five banks. The visits involved interviews with representative staff from all relevant sections of the bank including compliance, training, collections and the various hardship assessment teams.

Obligations under Clause 25.2

The Committee takes the view that the words “with your agreement” indicate that the bank’s obligations under clause 25.2 of necessity involve a communication process. This process may begin, for example, when a customer contacts the bank in response to a default letter on a credit facility. Although a bank is generally not required to “try to help” a customer who consistently fails to respond to bank letters or collection activity, the Committee expects banks to be considerate of the fact that some customers deal with their financial difficulties by trying to avoid their creditors. This issue is also dealt with under the “Best Practice” section of this report.

The Committee expects that in trying to help a customer in accordance with clause 25.2, a bank will have regard to the customer’s personal circumstances.

The Committee is of the view that consideration of the clause 25.2 is closely linked to a banks’ obligations under clause 2.2 to act fairly and reasonably in a consistent and ethical manner. In that regard the Committee agrees with the approach set out in the Banking and Financial Services Ombudsman’s Bulletin 46.

The Bulletin states that acting fairly and reasonably requires a bank to:

- Give genuine consideration to a repayment proposal or hardship variation application and any reasonable alternatives that will help the customer overcome their financial difficulties;
- Give reasons for any rejection of the proposal, preferably in writing;
- Ensure that those reasons reflect legitimate concerns and are referable to the particular customer's circumstances;
- Not start or conclude enforcement action before a decision is made and communicated; and
- Respect the customer's appointment of an adviser and, if one is appointed, not deal directly with the customer.

It is not appropriate for a bank to have a "one size fits all" approach to hardship applications, and to apply a formula in responding to those applications. Such an approach does not fulfil the obligations under clauses 2.2 and 25.2. Compliance with Code obligations requires an assessment of each customer's personal circumstances when hardship is raised.

The commencement of the communication process between the customer and the bank also triggers the obligation to inform customers of the hardship provisions of the UCCC. The obligation is to inform customers where the provisions "could" apply. This obligation should be read widely, and applied to any customer who has a regulated credit facility and is unable to meet their obligations due to a reasonable cause.

Other Relevant Clauses

The Inquiry also looked at related clauses of the Code such as, but not limited to:

- Clause 2.2 - Acting fairly and reasonably;
- Clause 7 - Staff training and competency;
- Clause 10 - Terms and Conditions, particularly clause 10.2(e)(v);
- Clause 29 - Debt Collection.

The compliance visits also allowed a limited assessment of the reviewed banks' compliance with clause 9 – Availability of copies of the Code.

Findings

Training

The Inquiry established that comprehensive information about the Code, including clause 25.2, is effectively incorporated into each of the five banks' training programs. Staff generally undergo training in the Code when they join a Bank and receive follow up Code training at regular intervals. The Committee is satisfied with the level of Code training provided as evidenced by the Inquiry.

Assistance with financial difficulties

The reviewed banks generally demonstrated a good understanding of the requirement to try to help customers with their financial difficulties.

The larger banks had staff dedicated to the assessment of hardship applications, either within or separate to the collections area of the bank. Customers identified as hardship cases are referred to such staff by other areas of the bank. The Committee recognises the benefit of having such dedicated areas of the bank, and encourages banks to use a wide definition of hardship for such referrals, so that all potential hardship cases are captured.

Some banks did not directly canvas the question of financial hardship with customers in default, but relied on the customer to raise the issue. The explanation for this approach was that customers in financial difficulties are usually forthcoming about their circumstances.

The Committee has some concern with this approach. Some customers in genuine hardship may not receive the assistance they are entitled to under the Code because they did not, for whatever reason, provide unsolicited information about their financial circumstances.

All reviewed banks indicated that the options available to assist customers with financial difficulties exceeded the examples set out in the UCCC. In particular, banks mentioned waiving interest, partial debt forgiveness and refinancing of credit card debts into facilities with a lower interest rate. The various options are subject to the commercial judgement of each individual bank.

Notification of the hardship variation provisions

There appeared to be confusion amongst some of the banks as to when customers should be notified of the hardship variation provisions of the UCCC.

The Committee has advised the banks concerned of their obligations to notify a customer of the hardship variation provisions of the UCCC as soon as the bank is made aware that the customer is in financial difficulties. The Committee wishes to make clear that the hardship variation provisions extend beyond section 66 of the UCCC. Section 68, in particular, is relevant to customers who have had a hardship variation application declined by their bank.

Best Practice

The Committee observes that the following practices observed by some of the reviewed banks appropriately reflect the spirit of the Code and meet the key commitment of working towards improving standards of practice in the industry:

- Adapting the requirements of clause 10.2(e)(v) to default letters, so that customers are advised, at the time of default, that they should notify the bank promptly if they are in financial difficulty; and
- Raising the question of financial difficulties as a matter of course in communication with customers who are in default.

Conclusion

This Inquiry has given the Committee a useful snapshot of compliance with clause 25.2. All indications are that the banks are generally committed to fulfilling their obligations under the letter and spirit of this clause of the Code.

Complaints from customers and information provided by third parties such as consumer organisations and the BFSO will continue to inform the Committee as to whether the compliance regimes reviewed by the Inquiry are operating as described and in accordance with the Code on an ongoing basis.

The Committee expresses its appreciation of the ready cooperation of the banks involved in the Inquiry.