

Banking Code Compliance Committee

FINDING

Subject	CX4371
Banking Code of Practice obligations	Clause 25.1 of the 2004 Code Clauses 28.2, 37.2, 3.2 and 9 of the 2013 Code
Date of this document	31 March 2020

Introduction

1. The Banking Code Compliance Committee (BCCC) is an independent compliance monitoring body established under clause 207 of the [2019 Banking Code of Practice](#) (2019 Code). Its purpose is to monitor and drive best practice Code compliance.
2. The BCCC's powers and functions are set out in its [Charter](#). One of the BCCC's functions is to investigate and determine an allegation from any person that a Code-subscribing bank (bank) has breached the Code.
3. On 1 July 2019, the BCCC replaced the Banking Code Compliance Monitoring Committee (CCMC). The CCMC was established under clause 36 of the [2013 Code of Banking Practice](#) (2013 Code).
4. Investigation CX4371 was initiated by the CCMC in August 2018 and since 1 July 2019, the BCCC had carriage of the matter pursuant to its Charter.
5. The BCCC issues this Finding in accordance with clause 6 of the BCCC Charter and Appendix 3 of its [Operating Procedures](#).
6. Following an investigation into the alleged Code breaches made by the customer, the BCCC issued a Notice of Proposed Finding (Notice) to both parties. Both parties were given an opportunity to respond to the BCCC's Notice.
7. After considering the responses received from both parties, the BCCC finds that the bank breached:
 - a. clause 25.1 of the 2004 Code, and
 - b. clauses 28.2, 37.2, 3.2 of the 2013 Code.
8. The key issues and reasons for the Finding are set out below.
9. **Appendix 1** to this Finding contains good practice guidance to assist banks to continually improve their compliance with the Code.

Background

10. This Finding has been prepared in response to an allegation made by a customer.

11. The events concerning the bank's Code breach allegations are as follows:

Timeline of events

Date	Event
January 2007	The customer obtained a credit increase of \$5,000, bringing their credit card limit to \$12,000.
October 2007	The customer obtained a credit increase of \$3,500, bringing their credit card limit to \$15,500.
July 2009	The customer obtained a Home Loan facility with the loan amount of \$60,000 with a five-year interest only term from the bank.
May – December 2014	The customer said they made several enquiries with their bank about their home loan arrangement but did not receive suitable advice or service.
10 – 19 February 2016	The customer said they had five telephone conversations with the bank's branch, followed by two telephone conversations with the Variations/Home Loan sales team, informing the bank of their financial difficulty. The customer was advised that their situation had been referred to the bank's financial difficulty assistance department and they would be contacted in a few days.
4 March 2016	The customer wrote to their bank complaining they had not been contacted by the bank even though they were advised by a bank staff member that their matter had been referred to the financial hardship department and they will be contacted in a few days.
24 August 2016	The customer's Member of Parliament emailed the bank on behalf of the customer and requested the bank respond to a request for reinstatement of the previous arrangement of interest only home loan repayments.
2 September 2016	The bank emailed the customer to confirm discussions in February 2016 to the effect that the bank was unable to convert the loan back to interest only and increase the limit. It also said that no request for financial difficulty assistance had been made by the customer and requested advice as to what assistance they were now seeking.
7 September 2016	The bank emailed the customer informing them that, during previous discussions, the bank had advised the customer numerous times that the maximum interest only period on Owner Occupied property was five years.
10 September 2016	The bank emailed the customer confirming that their 2009 loan agreement stated that the interest only period was five years (ending 28 July 2014) and that the loan would then revert to a variable interest rate. The email went on to list the criteria that a bank would assess should the customer seek a Home Loan product swap from the bank.

20 February
2018

The customer wrote to the CCMC, outlining their Code breach allegations.

The BCCC's findings

Clause 25.1 of the 2004 Code

12. Clause 25.1 of the 2004 Code required banks to exercise the care and skill of a diligent and prudent banker when approving credit applications.
13. The customer was provided with two unsolicited credit card increases: a \$5,000 credit increase in January 2007, bringing the credit limit to \$12,000, and a \$3,500 credit increase in October 2007, raising the total credit card limit to \$15,500.
14. At the time of these credit card increases, the customer had a \$50,000 home loan, was unemployed and a recipient of three types of government payments: disability pension; education allowance; and mobility allowance.
15. In July 2009, the bank approved a Home Loan Facility for the amount of \$60,000 for a term of 26 years with a five-year interest-only period. The customer was 62 years of age at the time.
16. The BCCC engaged a banking specialist to review the credit card limit increases and the approved Home Loan.
17. The banking specialist determined that the bank did not act as a diligent and prudent banker when it provided the customer with credit from January 2007 onwards because there were serviceability shortfalls for each of the approved credit facilities.
18. The specialist also found that there were several 'red flags' which the bank ought to have made further inquiries about. These included:
 - a. given their age, when the customer was expecting to gain employment
 - b. the customer had sought interest only payments of their Home Loan for a period of seven years, and
 - c. the customer was unemployed, and their only source of income was government payments.
19. The bank has acknowledged that it breached clause 25.1 of the 2004 Code.
20. The bank has since released the customer from the remaining obligations under the home loan (a sum of \$46,990) and refunded the customer the sum of all payments plus interest made by the customer since February 2019, when the facility was closed.

21. The bank also confirmed that it:

- a. no longer offers pre-approved credit card limit increases
- b. no longer allows extensions of interest only periods for owner occupier customers
- c. thoroughly examines a customer's circumstances and considers the totality of their position in its credit assessment processes, and
- d. has significantly enhanced its home loan review and assurance processes since 2009.

Clause 28.2 of the 2013 Code

22. Clause 28.2 of the 2013 Code required a bank to help its customers overcome financial difficulty with any credit facility they have with the bank.

23. In May 2014, the customer enquired about the changes to their mortgage arrangement, which the bank did not consider to be a request for financial difficulty assistance.

24. The customer alleged they requested information from the bank in five subsequent telephone conversations in May and June 2014.

25. The bank confirmed there are no notes on its systems relating to the five telephone calls. Accordingly, the bank was unable to confirm whether these discussions took place, and if so, the specific matters which were discussed.

26. In November 2014, the customer made a further online enquiry, referring to their earlier enquiry sent in May 2014 and phone conversations with the bank, noting that the bank had not contacted them as promised.

27. The bank confirmed a staff member contacted the customer, but the bank's notes are unclear about the specific matters which were discussed.

28. In March 2016, the customer wrote to the bank informing them that they had not been contacted by the bank's financial difficulty assistance team as had been advised two weeks previously in February 2016.

29. The customer did not receive a response to their letter and sought assistance from their local Member of Parliament who wrote to the bank.

30. In September 2016, the bank advised the customer that it was unable to increase the Home Loan amount and convert it to interest only as requested. The bank further sought confirmation from the customer as to what additional assistance was required from the bank.

31. The bank acknowledged that in February 2016, following a declined request to restructure the customer's Home Loan, the bank informed the customer that their matter would be referred to the bank's financial difficulty assistance team.

32. The bank further acknowledged that there are no notes on its systems that the matter was in fact referred to the bank's hardship assistance team on or around February 2016 including no evidence of receipt or acknowledgement of referral and no evidence of discussions with the customer.
33. The bank acknowledged it breached clause 28.2 of the 2013 Code, admitting "*that it was on notice of the customer's potential hardship from February 2016 and should have made contact with the customer to assist [them] to overcome [their] financial difficulties*".
34. As noted above in paragraph 20, the bank has subsequently released the customer from their obligations under the Home Loan and refunded the customer the sum of all payments plus interest made by the customer since February 2019.
35. The bank has also taken steps to:
- a. ensure that its employees have undertaken a 'Vulnerable Customer' online learning module which contains all pertinent information and advice to identify financial difficulty and hardship triggers/notifications
 - b. the bank's financial difficulty team's training program links customer-facing staff in branches across Australia to local Financial Counsellor support
 - c. include financial difficulty training as part of induction to all customer and small business facing employees including call centres and branch staff
 - d. ensure its staff have undertaken responsible lending training which includes guidelines for identifying and dealing with customers experiencing financial difficulty
 - e. ensure there are online resources and articles regarding identifying financial difficulty and referring customers to the bank's financial difficulty team, and
 - f. simplify its financial difficulty policy to make easier for its staff to navigate.

Clause 37.2 of the 2013 Code

36. Clause 37.2 of the 2013 Code required banks' internal dispute resolution processes to meet the standards set out in the Approved Standard (the Australian Securities and Investments Commission's (ASIC) [Regulatory Guide \(RG\) 165](#)).
37. The customer wrote to the bank in March 2016, complaining the bank had not contacted them like it said it would despite informing them two weeks previously, that their matter had been referred to its financial difficulty assistance team.
38. The bank explained that the customer's March 2016 email was not acknowledged until September 2016 because the bank's complaints team thought the customer's request was being handled directly by other areas of the bank.
39. Further, the bank did not identify the email as a new complaint because the bank was of the view that the email formed part of an ongoing line of enquiry regarding the customer's Home Loan.

40. The BCCC concluded that the correspondence received from the customer constituted a complaint as defined in ASIC's RG 165.

41. RG165.78 defines 'complaint' as

An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

42. In the customer's letter to the bank in March 2016, they stated *"It is now two weeks since I was given this advice, [the bank's financial difficulty assistance team] have still not made any contact with me"*. The customer is clearly expressing their dissatisfaction with the bank failing to contact them as previously promised.

43. The letter ends with *"I would appreciate your advice as to when [the bank's financial difficulty assistance team] do intend to contact me and I would prefer if they communicate with me by email"*. The customer is clearly expecting a response from the bank.

44. The BCCC is satisfied that the customer's correspondence satisfies the definition of a complaint under RG165.78. The bank was obliged under the Code to respond to their complaint in line with the approved standard (that is, within 21 days because the complaint related to financial difficulty).

45. The bank acknowledged the customer's complaint in September 2019, 182 days after it was received.

46. The bank has acknowledged that it breached clause 37.2 of the Code by failing to identify the letter received from the customer in March 2016 as a complaint and therefore failed to respond accordingly.

47. The BCCC notes that ASIC is currently undertaking work into matters regarding complaints handling (including a revised RG165) which are likely to lead to improved complaints handling procedures across the banking industry.

Clause 3.2 of the 2013 Code

48. Clause 3.2 of the 2013 Code required banks to act fairly and reasonably towards its customers in a consistent and ethical manner.

49. The BCCC finds that the bank breached its obligations under 3.2 of the 2013 Code by not lending responsibly to the customer on three separate occasions, failing to refer the customer for financial difficulty assistance when requested and failing to respond appropriately to their complaint.

50. The BCCC also considered whether the identified breach is serious as defined in the BCCC's [Guidance Note No. 1 – Breach Identification and Reporting](#).

51. The BCCC concluded that a significant amount of harm was caused by the bank's actions. The bank repeatedly breached its obligations to the customer under the 2004 and 2013 Codes, and the customer has expressed the 'debilitating distress' the bank had imposed on them.

52. The BCCC finds, and the bank agrees, that its breach of clause 3.2 of the 2013 Code is a serious breach.

Clause 9 of the 2013 Code

53. Clause 9 of the 2013 Code required bank staff members to be trained so that they can competently and efficiently discharge their functions and provide the banking service they are authorised to provide in compliance with this Code.

54. The bank explained that its staff in this instance (assisting the customer with their financial difficulties) had undertaken training relating to the bank's lending policies and procedures, including the requirement to assess suitability and ensure the customer would not experience financial difficulty in meeting their obligations under the facility.

55. The staff member identified the customer's financial difficulty enquiry and advised the customer they would be referred through to the bank's financial difficulty assistance team. However, they did not complete the referral, and this led to a breakdown in the process.

56. The bank has confirmed that there are very few instances since February 2016 where a complaint has been lodged by a customer where the bank had not identified or responded to their financial difficulty enquiry. During this period, the bank provided financial difficulty assistance to a significant number of customers. Given this low rate of incidence, the BCCC is satisfied that a lack of training is unlikely to be the root cause of the issues in this case.

57. Consequently, the BCCC does not consider there is sufficient evidence to support a finding that the bank breached clause 9 of the 2013 Code. The BCCC is satisfied that the Code breach of clause 28.2 resulted from a staff member failing to follow the process rather than there being a broader training issue.

58. Nevertheless, the bank has confirmed that it has undertaken significant work to ensure that employees with direct customer contact are trained and able to identify financial difficulty triggers.

59. Additionally, the bank has established:

- a. a team dedicated to supporting the bank's most vulnerable customers, and
- b. tools to help identify customers who may be experiencing financial difficulty.

Application of Sanctions

60. The BCCC has the power to apply sanctions to a Code Subscriber for a breach of the Code where a finding has been made that the breach is serious or systemic.¹
61. The BCCC may impose one or more sanctions after considering the seriousness of the breach.²
62. The BCCC will warn the bank about its conduct when engaging with the customer in this case. Should similar instances of non-compliance occur in the future, the BCCC may publicly name the bank for non-compliance with the Code.



Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee

¹ Clause 214 of the 2019 Code and clauses 7.1 of the BCCC Charter provides that the BCCC has the power to apply sanctions to a Code Subscriber for a breach of this Code where a finding has been made that: the breach is serious or systemic; the bank had failed to act on BCCC's request to remedy a breach, or failed to do so within a reasonable time; there has been a breach of an undertaking given to the BCCC; or the bank has not taken adequate steps to prevent a serious or systemic breach from reoccurring'.

² Clause 215 of the 2019 Code and clause 7.2 of the BCCC Charter provides that the BCCC may impose one or more sanctions after considering the seriousness of the breach. Sanctions available to the BCCC are: requiring the bank to rectify or take corrective action on the breach identified; requiring a bank to undertake a compliance review of or remediation actions; formally warning a bank; requiring a bank to undertake a staff training program on the Code; naming a bank in the BCCC annual report or website; reporting serious or systemic ongoing instances where a bank has been non-compliant to ASIC.

Relevant Code obligations

2004 Code, Clause 25:

Before we [the bank] offer or give you a credit facility (or increase an existing credit facility), we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay it

2013 Code, Clause 28.2:

With your agreement and cooperation, 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.

2013 Code, Clause 37.2:

If you are (a) an individual, and not small business (b) or a small business to which any relevant internal complaints handling standard or guideline which ASIC publishes for application to Australian financial services and credit licensees ('Approved Standard') applies, our internal process will meet the standards set out in the Approved Standard (for example, as at the date of publication of this Code, Regulatory Guide 165).

2013 Code, Clause 3.2:

We will act fairly and reasonably towards you in a consistent and ethical manner. In doing so we will consider your conduct, our conduct and the contract between us.

2013 Code, Clause 9:

We will ensure our staff (and our authorised representatives) will be trained so that they:

- a. Can competently and efficiently discharge their functions and provide the banking services they authorised to provide in compliance with this Code; and*
- b. Have adequate knowledge of the provisions of this Code and its banking application to banking services.*