

Banking Code Compliance Committee

FINDING

Subject	CX4530
2013 Banking Code of Practice obligations	Clauses: 37.2 and 3.2
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 discretionary 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 CX4530 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 Charter and Appendix 3 of its [Operating Procedures](#).
6. Following an investigation of 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 this Notice.
7. After considering the responses received from both parties, the BCCC finds that the bank did not breach the following 2013 Code obligations:
 - a. clause 37.2 (internal dispute resolution), and
 - b. clause 3.2 (fair and reasonable conduct).
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 the customer that the bank breached its obligations under the 2013 Code.
11. The customer, who self identifies as being vulnerable, disputed certain transactions on their account with the bank (the dispute) which were made through a third-party bank's ATM. The customer alleges that when they expressed their dissatisfaction (the complaint) about the time it would take to investigate the disputed transactions, it took the bank more than 45 days to respond to that complaint.
12. The BCCC attempted to contact the customer to seek further information about their allegations, however no information was provided.
13. As such, based on the information provided, the BCCC accepts the below as an accurate description of events:

Timeline of events

Date	Event
8 March 2018	<ul style="list-style-type: none">The customer lodged a transaction dispute form (the form) with the bank.
9 March 2018	<ul style="list-style-type: none">The bank acknowledged receipt of the form.The customer attended a branch and expressed dissatisfaction about the length of time it could take for the bank to complete their investigation.A bank staff member lodged a complaint about the customer's expression of dissatisfaction.
16 March 2018	<ul style="list-style-type: none">The bank informed the customer, via email, that they were awaiting information from the third party bank.
20 March 2018	<ul style="list-style-type: none">The bank sent another email to the customer with an update about the dispute. The bank advised the customer that it was awaiting a response from the third party bank.
22 March 2018	<ul style="list-style-type: none">The bank spoke to the customer and provided a follow up email which outlined that a further request was sent to their disputed transactions team to liaise with the third party bank and expedite the review of the disputed transaction.

The BCCC's findings

Clause 37.2 of the 2013 Code

14. Clause 37.2 of the 2013 Code required banks' internal dispute resolution (IDR) processes to meet the standards set out in the Australian Securities and Investments Commission's (ASIC) [Regulatory Guide \(RG\) 165](#).
15. The customer attended the bank branch on 9 March 2018, to complain about the time it would take to resolve the disputed transactions. The bank provided its final response to the customer on 22 March 2018.
16. RG165.88 requires banks to provide a final response to a customer's complaint within 45 days of having received the complaint.
17. The bank provided a final response to the customer's complaint 13 days after the complaint was received. This is within the 45-day timeframe required under RG 165.
18. RG165.90 provides the requirements for a final complaint response, which is that it should inform a customer of the outcome of their complaint, their right to take the complaint to an external dispute resolution (EDR) scheme, along with the name and contact details of this scheme. The BCCC finds the bank's final response of 22 March 2018, satisfied all these requirements.
19. As such, the BCCC finds that the bank met its obligations under clause 37.2 of the Code.

Clause 3.2 of the 2013 Code

20. Clause 3.2 of the 2013 Code required banks to act fairly and reasonably towards customers, in a consistent and ethical manner. In doing so, the bank must consider the customer's conduct, their own conduct and the contract between them.
21. For the duration of the customer's complaint between 9 March 2018 and 22 March 2018, the bank acted in a fair and reasonable manner towards the customer.
22. The BCCC considers that the bank provided the customer with appropriate updates about the IDR investigation on 16 and 20 March 2018. In addition, the bank's final response of 22 March 2018 was provided within 45 days of the customer lodging the complaint, meeting the criteria required by clause 37.2 of the 2013 Code.
23. As such, the BCCC finds that the bank acted fairly and reasonably towards the customer while handling their complaint.



Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee

Relevant obligations of the 2013 Code

Clause 37.2:

If you are an individual, and not a small business; our internal process will meet the standards set out in the Approved Standard (for example, as at the date of the publication of this Code, Regulatory Guide 165).

Clause 3.2:

We [the bank] 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.