

Banking Code Compliance Committee

FINDING

Subject	CX5991
2013 Banking Code of Practice obligations	Clauses: 12.1(a), 13.1, 13.2, 13.3, 3.1(e), 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 CX5991 was initiated by the CCMC in February 2019 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 (the Notice) to both parties. Both parties were given an opportunity to respond to the Notice.
7. After considering the responses received from both parties, the BCCC finds that the bank:
 - a. breached the following 2013 Code obligations:
 - i. clause 12.1(a), 13.1, 13.2 and 13.3 (copies of documents), and
 - ii. clause 3.2 (fair and reasonable conduct).
 - b. did not breach clause 3.1(e) (communicate in a timely manner).
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

Background

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

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

Timeline of events

Date	Event
July 2018	<ul style="list-style-type: none">The customer's broker applied for a request to change the interest rate terms applicable to the customer's three home loans. A fully completed loan variation form ('form') was not provided to the bank.
July – 25 October 2018	<ul style="list-style-type: none">The bank declined the broker's application due to the lack of supporting information provided to approve the loan variation.The bank made a goodwill offer to reduce rates on existing loans and the customer accepted this offer.The customer applied to change the loans from variable to fixed interest rates.The bank informed the broker that they need to complete a form for the bank to assess the change.
November 2018	<ul style="list-style-type: none">The customer lodged a dispute with an External Dispute Resolution (EDR) scheme about the decline to change the requested loans from variable to fixed interest rates.
12 December 2018	<ul style="list-style-type: none">The customer sent an email to the bank requesting a copy of the terms and conditions applicable to the home loans.
17 December 2018	<ul style="list-style-type: none">The bank responded to the customer's email advising that the applicable terms and conditions, based on when the loan was established (in 2015), were no longer available.The customer was provided with a 'supplementary terms and conditions' booklet for September 2017.
9 January 2019	<ul style="list-style-type: none">The customer provided the bank with a completed loan variation request form.
18 February 2019	<ul style="list-style-type: none">The customer provided the bank with further information about rental income and liabilities.
27 February 2019	<ul style="list-style-type: none">The bank informed the customer the loan variation request was approved.

The BCCC's findings

Clauses 12.1(a), 13.1, 13.2 and 13.3 of the 2013 Code

12. Clauses 12.1(a), 13.1, 13.2, and 13.3 of the 2013 Code require banks to provide customers with certain copies of documents, including terms and conditions of any ongoing banking service offered, in an expeditious manner. These obligations also extend to the retention of these documents in accordance with the relevant legislation.
13. The bank acknowledged it breached clauses 12.1(a), 13.1, 13.2 and 13.3 of the 2013 Code and the BCCC accepts the acknowledged breaches.
14. The bank acknowledges that it failed to provide:
 - a. the terms and conditions requested by the customer in an expeditious manner
 - b. the requested documents that had been retained in accordance with the relevant legislation in relation to a banking service a customer has, and
 - c. the requested document within 30 days.
15. The BCCC notes 'supplementary terms and conditions' need to be read alongside other documents, such as a 'fees guide' and other terms and conditions.
16. In accepting the above acknowledged breaches, the BCCC finds that it was not enough for the bank to provide the customer with the 2017 'supplementary terms and conditions.' Where a 'supplementary terms and conditions' are to be read in conjunction with other documents, it is expected a bank will also provide these documents to the customer.
17. After considering the evidence in this investigation, the BCCC does not find the bank's conduct when providing customers with requested copies of documents, amounts to a systemic breach of the Code.
18. The BCCC notes that these acknowledged breaches were caused by one staff member's error. Notwithstanding this, the bank has since taken steps to improve its policies and procedures and reduce the likelihood of this incident reoccurring. Specifically, the bank has implemented a central storage system for all customer facing disclosure documentation, including terms and conditions.

Clause 3.1(e) of the 2013 Code

19. Clause 3.1(e) of the 2013 Code requires banks to communicate with their customers, or their representatives, in a timely and responsible manner.
20. The customer's broker first enquired in June 2018 about the pricing available under different loan structures. In July 2018 the broker made a formal application to change the customer's loan type. This application was not approved until February 2019.
21. Based on the evidence provided, the BCCC finds that between July 2018 and February 2019, the bank was in communication with the customer and the broker in respect to the loan variation request.
22. Specifically, the BCCC notes the delay in the approval of this loan variation request was likely because the information required for the bank to complete its assessment had not been provided by either party.
23. On this basis, the BCCC finds that the bank communicated with the customer and the broker in a timely and responsible manner, meeting its obligations under clause 3.1(e) of the 2013 Code.
24. Whilst the BCCC finds the bank has complied with its obligations under clause 3.1(e) of the 2013 Code, it notes that the bank is taking steps to improve its communications with brokers.

Clause 3.2 of the 2013 Code

25. Clause 3.2 of the 2013 Code requires banks to act fairly and reasonably towards customers.
26. As stated above, the BCCC finds that the evidence does not support a finding that the bank failed to communicate with the customer and the broker in a timely and responsible manner, with respect to the loan variation request.
27. As such, the BCCC finds the bank's conduct in respect of this request was fair and reasonable, in compliance with clause 3.2 of the 2013 Code.
28. The BCCC has accepted the bank's acknowledgment that it failed to provide the customer with requested copies of the relevant terms and conditions.
29. Based on the evidence provided by the bank, and the acknowledged breaches, the BCCC finds the bank's conduct towards the customer in relation to his request for the relevant terms and conditions in December 2018, is a breach of the bank's obligation to act fairly and reasonably towards the customer.



Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee

Relevant obligations of the 2013 Code

Clause 12.1:

We [the bank] will expeditiously provide to you, or any person, on request:

- (a) The terms and conditions of any ongoing banking service we currently offer;*

Clause 13.1:

If you request a copy of a document, you may have rights in respect of that request under the National Consumer Credit Protection Act 2009 or Chapter 7 of the Corporations Act 2001, which are greater than those which apply under this Code. We will comply with the relevant law when it applies. Otherwise this clause 13 applies.

Clause 13.2:

At your request, we will give you a copy of any of the following documents that we have retained in accordance with relevant legislation for the retention of documents, relating to a banking service you have, or had, with us:

- (a) a contract (including terms and conditions, standard fees and charges and interest rates).*

Clause 13.3:

We will, subject to clauses 13.4 and 13.5, provide you with a copy of a document:

- (a) within 14 days, if the original came into existence more than 1 year or less before the request is given;*
- (b) within 30 days, if the original came into existence more than 1 year but less than 7 years before the request is given; and*
- (c) otherwise within a reasonable time*

Clause 3.1(e)

We will:

...

(e) communicate with you and/or your representatives in a timely and responsible manner whether by written or electronic communications (including by telephone)

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.