

Banking Code Compliance Committee

FINDING

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| Subject | CX4613 |
| 2013 Code of Banking Practice obligations | Clauses: 27, 28.2, 3.2 |
| Date of this document | 26 June 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 CX4613 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. The BCCC issued its Notice of Proposed Finding (Notice) to both parties, following an investigation of the allegations made by an authorised representative on behalf of the customer. Both parties were given an opportunity to respond to the BCCC's Notice.
7. Having considered the response received from the bank and noting that no additional comment was provided by the authorised representative, the BCCC finds that the bank breached the following 2013 Code obligations:
 - i. clause 27 (provision of credit)
 - ii. clause 28.2 (financial difficulty), and
 - iii. clause 3.2 (fair and reasonable conduct).
8. The key issues and reasons for the Finding are set out below.
9. The Finding is based on information provided by the authorised representative and bank prior to the release of the Australian Securities and Investments Commission's [Regulatory Guide 209: Credit Licensing: Responsible lending conduct](#) (RG 209) in December 2019.

10. **Appendix 1** to this Finding contains good practice guidance to assist banks to continually improve their compliance with the Code.

Background

11. This Finding has been prepared in response to an allegation made by an authorised representative on behalf of the customer.

12. The events concerning the bank’s Code breach allegations are as follows:

Timeline

| Date | Event |
|-----------------------------|---|
| 14 July 2016 | <ul style="list-style-type: none"> • A Personal Loan was provided in the customer’s name, following an online application. • At the time the loan was provided, the customer was living in an emotionally and financially abusive relationship. • The customer’s ex-partner applied for the loan in the customer’s name, without their knowledge. |
| 21 September 2016 | <ul style="list-style-type: none"> • A Credit Card was provided in the customer’s name, following an online application. • At the time the Credit Card was provided, the customer was living in an emotionally and financially abusive relationship. • The customer’s ex-partner applied for the Credit Card in the customer’s name, without their knowledge. |
| Approximately February 2017 | <p>The customer informed the bank that:</p> <ul style="list-style-type: none"> • they were living in an emotionally and financially abusive relationship, and • their ex-partner had obtained the Personal Loan and Credit Card in their name without their knowledge. <p>The bank told the customer that they were liable for both credit facilities, because they were in the customer’s name and they would be responsible for repayments.</p> |
| February 2018 | <p>The customer’s mother contacted the bank on their behalf, to inform it that the ex-partner had entered into these loans using the customer’s identity.</p> <p>The bank asked the customer to come into a branch, complete a statutory declaration and report the matter to the Police, before they could investigate the allegations.</p> |

The BCCC's findings

Clause 27 of the 2013 Code

13. Clause 27 of the 2013 Code required banks to exercise the care and skill of a diligent and prudent banker, when approving credit applications.
14. The BCCC finds that the bank failed to exercise the care and skill of a diligent and prudent banker when approving the Personal Loan application in July 2016 and the Credit Card application in September 2016.
15. At the time both credit facilities were entered into, the customer was living in an emotionally and financially abusive relationship with an ex-partner, who applied for both these loans in the customer's name, without consent.
16. The BCCC notes that as part of the bank's assessment of the customer's ability to repay the Personal Loan and Credit Card, the bank relied on credits from the customer's ex-partner to verify the declared rental expenses. However, these credits were not made on a regular basis, were for inconsistent amounts and did not substantiate that another party was contributing to the customer's rental expenses.
17. The BCCC finds the bank failed to demonstrate that it verified the customer's monthly rental expenses in a diligent and prudent manner and further inquiries should have been conducted to identify any discrepancies. The customer's declared expenses in the Personal Loan application in July 2016 and Credit Card application in September 2016 differed, and should have prompted the bank to undertake further enquiries. Such enquiries may have brought to light that the customer was not the person actually applying for the loans.
18. The BCCC finds the bank did not exercise the care and skill of a diligent and prudent banker in approving these credit applications.
19. The BCCC acknowledges the bank has taken steps since 2016 to improve its automated systems for assessing credit applications and that new requirements in the revised RG209 may address some of the issues identified in this case. Nevertheless, the BCCC remains concerned about the bank's approach to responsible lending and may conduct a targeted inquiry at a later date to investigate these concerns.

Clause 28.2 of the 2013 Code

20. Clause 28.2 of the 2013 Code required banks to try and help customers to overcome their financial difficulties.
21. The bank failed to assist the customer overcome their financial difficulties in February 2017, resulting in a breach of clause 28.2 of the 2013 Code. The BCCC notes that as early as January 2017, the bank should have recognised the customer was experiencing financial difficulty and attempted to help the customer by providing appropriate financial difficulty assistance.
22. The bank has acknowledged that in February 2018, when contacted by the customer's mother, the bank should have recognised the customer's vulnerability and

made a formal referral to its financial difficulty team. As a result, the BCCC finds that the bank breached clause 28.2 of the 2013 Code.

23. The BCCC notes the bank has implemented, and continues to develop, improved processes and training to support its staff in identifying customers experiencing financial difficulty and vulnerability.

Clause 3.2 of the 2013 Code

24. Clause 3.2 of the 2013 Code required banks to act fairly and reasonably towards customers.
25. The bank acknowledged it breached clause 3.2 of the 2013 Code.
26. In finding a breach of clause 3.2 of the 2013 Code, the BCCC notes the bank failed to act fairly and reasonably towards the customer by approving the Personal Loan and Credit Card applications in 2016 and failing to assist the customer to overcome their financial difficulties.
27. The bank also acknowledges the requirement to submit a statutory declaration where a customer alleges an account was opened fraudulently, should not have been a barrier to conducting an investigation into the customer's allegations and has since removed this requirement.



Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee

Relevant 2013 Code obligations

Clause 27:

Before we [the bank] offer, give you 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 the credit facility.

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.

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.