

Banking Code Compliance Committee

FINDING

Subject	CX4623
2013 Code of Banking Practice obligations	Clauses: 3.2, 9, 28.2, 28.3, 28.6, 28.8, 32.1, 37.2
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).
4. The CCMC was established under clause 36 of the [2013 Code of Banking Practice](#) (2013 Code).
5. Investigation CX4623 was initiated by the CCMC in August 2018 and since 1 July 2019, the BCCC had carriage of the matter pursuant to its Charter.
6. The BCCC issues this Finding in accordance with clause 6 of the BCCC Charter and Appendix 3 of its [Operating Procedures](#).
7. Following an investigation of alleged Code breaches made by a customer's authorised representative, 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.
8. 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 28.2 (overcoming financial difficulty)
 - ii. clauses 28.3 and 32.1 (dealing with authorised representatives)
 - iii. clause 28.6 (responding to financial difficulty requests)
 - iv. clause 28.8 (written reasons for financial difficulty assistance)
 - v. clause 37.2 (internal dispute resolution)
 - vi. clause 9 (staff training and competency), and
 - vii. clause 3.2 (fair and reasonable conduct).

9. The key issues and reasons for the Finding are set out below.
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 allegations made by a customer's authorised representative.
12. The events concerning the Code breach allegations are as follows:

Timeline

Date	Event
24 May 2018	The customer's authorised representative emailed the bank's legal representative to notify them that: <ul style="list-style-type: none"> it was representing the customer in relation to their home loan account, and the customer would be receiving payments from WorkCover, due to a workplace injury.
1 June 2018	The customer's authorised representative emailed the bank's legal representative to: <ul style="list-style-type: none"> advise that the customer was experiencing a period of temporary financial hardship due to a workplace injury request a three-month moratorium be provided with no default interest to accrue on the customer's home loan account, and request a three-month moratorium be provided with no default interest to accrue on the customer's credit card account.
18 June 2018	The bank's legal representative advised the customer's authorised representative that: <ul style="list-style-type: none"> the bank cannot provide the requested three-month moratorium on the customer's home loan account for the bank to refer the customer to its hardship team, the customer would need to maintain their monthly home loan repayments and prove these have been made they are not instructed to act in respect to the customer's credit card account the customer should contact the bank directly about financial difficulty assistance for their credit card account.
13 July 2018	The customer's authorised representative emailed the bank's legal representative to request that the customer's file be referred to the bank's internal dispute resolution (IDR) team.
19 July 2018	The bank registered the authorised representative's complaint.
23 July 2018	The bank's IDR team wrote to the customer, acknowledging the complaint.
6 August 2018	The bank wrote to the customer, informing them they need more time to review the complaint.

28 August 2018

The bank phoned the customer to discuss the complaint and issued a final response letter, closing the dispute.

The final response letter outlined:

- the customer was unhappy that they had not been offered financial difficulty assistance on their home loan account
- the customer's home loan account remained in arrears, and
- if the customer required any financial hardship assistance they could contact the bank's hardship assessment team.

The BCCC's findings

Clause 28.2 of the 2013 Code

13. Clause 28.2 of the 2013 Code required banks to help customers overcome their financial difficulty.
14. The bank acknowledged it breached clause 28.2 of the 2013 Code by failing to assist the customer overcome their financial difficulties in respect to their home loan account.
15. The BCCC finds the bank also failed to assist the customer overcome their financial difficulty in respect to their credit card account.
16. In issuing this Finding, the BCCC notes that:
 - a. the bank did not conduct a formal assessment of the customer's financial situation or engage in a genuine dialogue about the customer's circumstances.
 - b. the bank's legal representative requested the customer contact the bank directly if they needed financial difficulty assistance on their credit card.
 - c. the bank's legal representative requested the customer continue to make repayments on the home loan account before they could be referred to the bank's hardship team.
17. The BCCC notes it is good practice for a bank to take a holistic approach when assessing a customer's request for financial difficulty assistance, by considering all the credit facilities the customer has with the bank.

Clause 28.6 of the 2013 Code

18. Clause 28.6 of the 2013 Code required banks to respond to requests for financial difficulty assistance from a customer or their authorised representative.
19. The bank acknowledged that it breached clause 28.6 by failing to adequately respond to the customer's request for financial difficulty assistance in respect to the home loan account.
20. The BCCC also finds the bank breached clause 28.6 because a response was not provided to the authorised representative's request for assistance regarding the credit card account on 1 June 2018.

21. The BCCC considers the authorised representative's email of 1 June 2018 constituted a hardship notice and the response of 18 June 2018 did not adequately address this request for assistance. The BCCC considers it was not appropriate for the bank to:

- a. request the customer continue to make repayments on the home loan account before a referral to the bank's hardship team could be made, and
- b. deny assisting the customer in respect to the credit card account, because the legal representative did not have authority to act.

22. In issuing the Finding, the BCCC considers the bank failed to:

- a. meet its obligations under the [National Credit Code](#) to respond to the request for financial difficulty assistance within the required timeframe.
- b. consider the available information about the customer's individual financial circumstances.
- c. request further information to assess the customer's financial circumstances.

Clause 28.8 of the 2013 Code

23. Clause 28.8 of the 2013 Code required banks to provide customers with written notification of their decision to grant or deny financial difficulty assistance and the reasons for this decision.

24. The bank acknowledged that it failed to provide the customer with reasons for denying the application for financial difficulty assistance in respect to the home loan account.

25. The BCCC finds the bank also failed to acknowledge the customer's application for financial difficulty assistance in relation to his credit card account.

26. The BCCC notes:

- a. the bank should have clearly outlined the basis of its decision to not provide the customer with financial difficulty assistance
- b. it was not appropriate to request the customer continue monthly repayments before they could be referred to the bank's hardship team, and
- c. it is not appropriate for the bank not to address the customer's credit card account.

Clauses 28.3 and 32.1 of the 2013 Code

27. Clause 28.3 of the 2013 Code required banks to deal with customer's authorised representatives where they have been provided with their contact details. Where the bank has made reasonable attempts to contact the customer's authorised representative and has been unsuccessful, then the bank will contact the customer. Clause 32.1 of the 2013 Code required banks and their agents to comply with the [Debt Collection Guideline](#) which contains similar requirements.

28. The bank acknowledged it breached clauses 28.3 and 32.1 of the 2013 Code by contacting the customer directly in writing and via telephone on several occasions to discuss the complaint made by the authorised representative on 13 July 2018.
29. The BCCC finds the bank was on notice that the customer was represented and did not make any attempts to contact the authorised representative, instead it liaised directly with the customer about the complaint.
30. In acknowledging a breach of clauses 28.3 and 32.1 of the 2013 Code, the bank accepted a failure to comply with clause 9(b) of the Debt Collection Guideline.
31. The bank also accepted that when registering the complaint, an error was made by its staff in failing to note that the customer was represented.
32. The BCCC acknowledges the bank has since taken steps to provide written guidelines and additional training for its staff members to recognise when a customer is represented.

Clause 37.2 of the 2013 Code

33. Clause 37.2 of the 2013 Code required banks' IDR processes to meet the standards set out in the Australian Securities and Investments Commission's (ASIC) [Regulatory Guide \(RG\) 165](#).
34. The BCCC finds the bank failed to comply with its IDR obligations in relation to the authorised representative's complaint of 13 July 2018, which requested the customer's applications for financial difficulty assistance be referred to the bank's IDR team.
35. The bank acknowledged a failure to comply with clause 37.2 of the 2013 Code to the extent that it failed to:
 - a. register the complaint on 13 July 2018, the date it was received, and
 - b. provide a final response to the authorised representative within 21 days of having received the complaint.
36. The BCCC finds the bank's final response of 28 August 2018, failed to meet the standards set out in RG 165. The BCCC notes the final response letter:
 - a. provided the contact details for the bank's hardship team, despite acknowledging the complaint is about the customer being pursued for the home loan account without any financial difficulty assistance, and
 - b. did not address the customer's request for assistance in respect to the credit card account.
37. The BCCC acknowledges the bank is in the process of reviewing its IDR policies and procedures. The BCCC may make enquires at a later date to further investigate concerns about the bank's compliance with its IDR obligations under the Code.

Clause 9 of the 2013 Code

38. Clause 9 of the 2013 Code required banks to train staff to competently and efficiently provide banking services in compliance with the 2013 Code.
39. The bank has acknowledged it breached the 2013 Code's training obligations for the team that registered the authorised representative's complaint, accepting that this team would have benefitted from additional guidance.
40. In accepting the bank's acknowledged breach, the BCCC remains concerned about the manner in which the bank has handled the authorised representative's request for financial difficulty assistance and subsequent complaint about a failure to provide this assistance.
41. The BCCC notes the bank is conducting a review of how it deals with requests for financial difficulty assistance and complaints handling. The BCCC will continue to make further enquiries about the bank's conduct.

Clause 3.2 of the 2013 Code

42. Clause 3.2 of the 2013 Code required banks to act fairly and reasonably towards customers.
43. The BCCC finds the bank failed to act fairly and reasonably towards the customer and their authorised representative in the interactions identified throughout this Finding.
44. As noted above, the BCCC has concerns about:
 - a. the manner in which the bank handled the authorised representative's request for financial difficulty assistance in respect to both the customer's home loan and credit card accounts
 - b. the manner in which the bank handled the authorised representative's complaint, and
 - c. the final response provided as an outcome to the complaint.
45. The BCCC acknowledges the bank has taken steps to enhance its IDR capabilities and the way in which it handles requests for financial difficulty assistance. Some of the steps the bank has taken include:
 - a. creating a dedicated complaints team which specialises in financial hardship
 - b. providing additional and specialised training for staff in financial difficulty and complaints handling, and
 - c. updating quality management frameworks.



Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee

Relevant obligations of the 2013 Code

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.

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 are authorised to provide in compliance with this Code; and*
- (b) have an adequate knowledge of the provisions of this Code and its application to banking services.*

Clause 28.2:

With your agreement and cooperation, we [the bank] 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 28.3:

We will deal with you or, at your request, with your authorised financial counsellor or representative where you have given us their correct contact details. If our reasonable attempts to contact or otherwise deal with your financial counsellor or other representative are unsuccessful, we will revert to dealing with you.

Clause 28.6:

We will respond promptly (for example, within the timeframes prescribed by the National Credit Code, if it applies) to any requests for assistance from you, or your authorised representative, in relation to your financial difficulties with a credit facility you have with us. We will take into account the information available to us, including the information you provide to us, about your financial situation in determining whether or not we are able to provide assistance and the nature and extent of any assistance.

Clause 28.8:

inform you in writing of our decision whether or not to provide you with any assistance if you are in financial difficulty with a credit facility you have with us and the reasons for our decision. If we agree to provide you with assistance, we will confirm in writing the main details of the arrangements.

Clause 32.1:

We and our collection agents will comply with the [ACCC's and ASIC's "Debt Collection Guideline: for Collectors and Creditors"](#) (the "Debt Collection Guideline") dated May 2010 (as amended or replaced from time to time) when collecting amounts due to us and we will take all reasonable steps to ensure that our representatives do likewise. If we become aware that our collection agents or representatives are not

complying with the Debt Collection Guideline we will direct them to comply.

Clause 37.2:

If you are:

- (a) an individual, and not a small business; or,*
- (b) 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 the publication of this Code, Regulatory Guide 165).