

# Banking Code Compliance Committee

## FINDING

<b>Subject</b>	<b>CX3998</b>
<b>2013 Code of Banking Practice obligations</b>	<b>Clauses: 32.1, 28.2, 37, 24, 9, 36(g), 3.2</b>
<b>Date of this document</b>	<b>18 September 2020</b>

## 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. The CCMC commenced investigation CX3998 in March 2017 into a Code-subscribing bank (bank) and one of its business units, as a result of a referral from the bank's External Dispute Resolution scheme.
5. The CCMC required the bank to undertake an external investigatory Audit into its business unit's compliance with the 2013 Code in relation to the loan facilities it provided.
6. Since 1 July 2019, the BCCC has had carriage of the matter pursuant to its Charter.
7. Following the completion of the Audit review, the BCCC issued a Notice of Proposed Finding (Notice) to the bank and the party that referred the matter to the CCMC. The Notice was prepared with reference to the Audit Report and parties were provided an opportunity to respond to the BCCC's proposed findings.
8. Having considered the responses from both parties, the BCCC issues this Finding in accordance with clause 6 of the BCCC Charter and Appendix 3 of its [Operating Procedures](#).
9. **Appendix 1** to this Finding contains good practice guidance to assist banks to continually improve their compliance with the Code.

## Summary of Findings

10. The BCCC finds that the bank breached the following 2013 Code obligations:

- a. Clause 32.1 (debt collection)
- b. Clause 28.2 (financial difficulty)
- c. Clause 37 (complaints handling)
- d. Clause 24 (privacy and confidentiality)
- e. Clause 9 (staff training and competency)
- f. Clause 36(g) (complying with CCMC's requests), and
- g. Clause 3.2 (fair and reasonable conduct).

11. The BCCC's Operating Procedures provide that a Finding will include comments as to whether an identified breach is serious and/or systemic. The [BCCC's Guidance Note No 1 – Breach Identification and Reporting](#) (Guidance Note 1) provides guidance on what constitutes a 'systemic' and 'serious' breach.

12. The BCCC finds that the breaches of the following clauses are serious and/or systemic:

Relevant Code provision	BCCC finding
Clause 32.1	Systemic and serious
Clause 28.2	Systemic and serious
Clause 37	Systemic and serious
Clause 24	Systemic and serious
Clause 9	Systemic and serious
Clause 36(g)	Serious
Clause 3.2	Systemic and serious

13. The BCCC will also publicly name the bank and its business unit in its Annual Report and on its website for non-compliance with the Code.

14. The background, key issues and reasons for the findings are set out below.

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## Background

### Loan facilities

15. Between 2001 and 2009, the bank originated and purchased loan facilities relating to a Managed Investment Scheme (loans) from an agri-business.
16. In 2009, the agri-business and its associated subsidiaries were placed into administration and in November 2009, went into liquidation. The loans were then assigned to a separate business unit within the bank for debt collection.
17. Some investors were left with debt, without corresponding assets, resulting in these investors facing difficulties in servicing their loans and therefore creating challenges for the bank and its business unit in collecting the amount owed.
18. In 2012, the bank's business unit temporarily ceased collection activities for the loans due to the commencement of Court proceedings.
19. The business unit then recommenced collection activity on the investors' loans from February 2015 onwards. Throughout this Finding, investors have been referred to as 'customers'.

### Investigatory Audit

20. Throughout the investigation CX3998, the CCMC had concerns about the business unit's compliance with the 2013 of Banking Practice (2013 Code).
21. As a result, the CCMC requested the bank to conduct an investigatory Audit of the relevant loan files at risk of non-compliance with 2013 Code obligations.
22. The Audit commenced in July 2019 and was conducted by an external auditor over a course of five months.
23. The Audit examined a randomly selected sample of 348 loan files (from the population of 3,964 loan files) that had arrears greater than 60 days, at one or more times, between the period February 2015 and February 2019.
24. These files were reviewed for the business unit's compliance with the following 2013 Code obligations:
  - a. clause 28.2 (financial difficulty), and
  - b. clause 32.1 (compliance with "Debt Collection Guideline: for Collectors and Creditors").
25. On 20 December 2019, a copy of the final Audit report was provided to the BCCC and the bank.

## Summary of Audit findings

26. The Audit review noted three broad thematic observations pertaining to the loan portfolio:
- a. the bank did not have adequate systems, processes or resourcing to cope with the large influx of collection activity in 2015
  - b. the business unit was largely segregated from the broader bank operations, meaning there were multiple deviations from the requirements of the Debt Collection Guideline (DCG) and financial difficulty provisions under the 2013 Code, and
  - c. the bank should seek to improve its underlying systems and record keeping practices. Specifically, the bank should improve its financial difficulty processes, the appropriateness and consistency of its communications, and ensure internal customer response times are well defined and adhered to.
27. The Audit also identified deviations across clauses 32.1 and 28.2 of the 2013 Code. Overall, there were 492 deviations identified across the 348 individual loan files. Most of the deviations were under the following sections of the DCG:
- a. record keeping (sections 8 and 10 of the DCG)
  - b. responding to customer's requests for information (section 11 of the DCG), and
  - c. issuing consistent and appropriate correspondence (section 12 of the DCG).
28. A 'potential Debtor impact' was observed across 55 loan files, pertaining to 51 customers.<sup>1</sup> Most deviations from a potential Debtor impact perspective were in the following areas:
- a. providing information and documentation (section 11A of the DCG)
  - b. contact for a reasonable purpose (section 2A of the DCG), and
  - c. financial difficulty (clause 28.2 of the 2013 Code).

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<sup>1</sup> The Audit defined 'potential Debtor impact' as, "when a Debtor has been engaged with in a suboptimal manner leading to potential delays, mismanagement of information, and/or poorer Debtor financial outcomes".

## The BCCC's Findings

### Clause 32.1 of the 2013 Code

29. Clause 32.1 required banks to comply with the [Debt Collection Guideline: for Collectors and Creditors](#) (DCG) when undertaking collection activities.
30. The DCG was developed by the Australian Competition and Consumer Commissioner (ACCC) and the Australian Securities and Investments Commission (ASIC). It was originally published in 2005 and has been updated since to reflect significant changes to the law.
31. The DCG aims to assist creditors, collectors and debtors understand their rights and obligations, and ensure that debt collection activity is undertaken in a way that is consistent with consumer protection laws.

### Audit report findings

32. The findings contained within the Audit report indicate that the bank has breached the following sections of the DCG:
  - a. Sections 1(a), (g)
  - b. Section 2(a)
  - c. Sections 4(c), (d)
  - d. Sections 5(a), (e), (g)
  - e. Sections 8(e), (f), (g)
  - f. Sections 9(b), (c), (g)
  - g. Sections 10(a), (b)
  - h. Section 11(a)
  - i. Sections 12(a), (b), (c)
  - j. Sections 14(g), (h)
  - k. Section 15(a), and
  - l. Sections 22(b), (c).
33. As the bank breached several sections of the DCG, this Finding will not contain a complete list of all instances where sections of the DCG were breached. Nevertheless, the BCCC has included examples below of deviations identified in the Audit report:
  - a. When customers advised the bank of their personal circumstances which led to their inability to service their outstanding debt, the bank did not either respond, provide a Statement of Financial Position and/or provide the details of a financial counsellor (section 11(a) of the DCG).
  - b. The bank issued collection letters to customers:
    - i. when a formal payment arrangement was in place and was complied with by the customer
    - ii. before providing a customer sufficient time to make payment under the agreed formal payment arrangement, or informal promise to pay
    - iii. without first responding to a customer's payment proposal, which the bank requested the customer to put forward (section 2(a) of the DCG).

- c. The bank failed to record a customer's request in relation to restricted contact hours, which led to the bank contacting the customer during the restricted hours (sections 4(c), (d) of the DCG).
- d. The bank rejected third-party written authorisations that met the requirements of the DCG or verbal authorisation from a customer (section 9(c) of the DCG).

### **The BCCC's position**

34. The BCCC finds that, in breaching numerous sections of the DCG, the bank has in turn breached clause 32.1 of the Code.
35. The Audit report identified 468 instances of deviations from the DCG by the bank across a sample size of 348 loan files. The BCCC therefore considers a large number of customers would likely have been impacted by breaches of clause 32.1 across the loan portfolio.
36. The BCCC therefore finds the bank's breach of clause 32.1 to be systemic.
37. The DCG emphasises the need for flexibility on the part of the collectors, including recognising debtors who may be vulnerable or experiencing financial hardship, and recognising that debtors may have a number of debts owing to different collectors.
38. The DCG forms an integral part of any debt collection process. Non-compliance with the DCG may impact a debtor's ability to live in basic comfort and prevent impoverishment or humiliation.<sup>2</sup>
39. For the reasons outlined above, and because of the large-scale impact breaches of the DCG would likely have had on the customers, the BCCC finds the bank's breach of Clause 32.1 to be serious.

### **Clause 28.2 of the 2013 Code**

40. 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.

### **Audit report findings**

41. The findings contained within the Audit report indicate the bank breached clause 28.2 of the 2013 Code. Numerous examples of deviations from clause 28.2 were noted in the Audit report. These include, but are not limited to, the bank:
  - a. being inflexible when the customer advised of serious illness, hospitalisation, or a death in the family.
  - b. not advising a customer of financial difficulty options, or providing a Statement of Financial Position form, when a customer exhibited financial hardship characteristics.
  - c. not following up on missing or incorrectly supplied documentation, prior to issuing a formal decline for financial difficulty assistance.
  - d. not responding to settlement proposals when the customer was in financial hardship.

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<sup>2</sup> Page 4 of the [Debt Collection Guideline](#)

- e. responding abruptly to missing information pertaining to financial difficulty applications, rather than working with the customer.
- f. not providing sufficient time for a customer to see a financial counsellor prior to continuing collection activity.
- g. not responding to a meeting request to discuss a potential payment arrangement.
- h. not formally declining financial hardship applications.
- i. not actioning a customer's request to discuss potential debt consolidation.

### **The BCCC's position**

- 42. Based on the findings of the Audit review, the BCCC finds that the bank has breached clause 28.2 of the 2013 Code.
- 43. The Audit report identified 24 instances of deviations from clause 28.2 across a sample size of 348 loan files. The breach affected more than one customer and consequently, the BCCC considers the breach to be systemic.
- 44. In November 2018, the CCMC released a report on [Assisting Customers in Financial Difficulty](#) (2018 Financial Difficulty Report) which highlighted both examples of good practice and areas where banks can improve. In this report, the CCMC made 14 Recommendations to improve Code compliance with financial difficulty obligations and progress towards better practice.
- 45. The BCCC places substantial importance on banks' compliance with financial difficulty obligations, as non-compliance may have long term negative impacts on customers.
- 46. The ability of the business unit staff members to identify triggers which may suggest that a customer is in financial difficulty and being able to assist customers adequately and appropriately should have played a significant role in its debt collection practices.
- 47. The bank has failed to act fairly and reasonable towards its customers by failing to ensure that its business unit complied with its financial difficulty obligations over a period of up to four years.
- 48. The BCCC therefore finds the bank's non-compliance with clause 28.2 of the 2013 Code to be serious.

### **Clause 37 of the 2013 Code**

- 49. Clause 37 of the 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 165 (RG 165)).

### **Audit report findings**

- 50. Section 22 of the DCG requires the bank to:
  - a. have an effective internal process in place for logging, assessing and taking timely action in response to complaints
  - b. adequately train staff members to identify complaints and to ensure that established complaints procedures are followed, and
  - c. not require that a complaint be in writing, and/or explicitly identified as such by a complainant before it is considered or investigated.



51. The requirements outlined in section 22 of the DCG align with the internal dispute resolution obligations of banks under ASIC's RG165 and, in turn, clause 37 of the 2013 Code. As such, a breach of section 22 of the DCG reasonably equates to a breach of clause 37.
52. The Audit report identified that the bank did not maintain a separate complaints handling team, complaints management framework, or defined complaint management system to manage complaints received from its customers.
53. In particular, the Audit report noted that:
  - a. no specific complaints management procedures were developed for the loan portfolio to outline key processes such as identification, triage and communication protocols, and
  - b. no comprehensive complaints management training was provided to business unit's staff members.
54. As a result of the above deficiencies, complaints that were identified and acknowledged were:
  - a. not recorded within a complaints register or equivalent
  - b. typically responded to by the same staff member who was associated with the complaint, representing a conflict
  - c. not escalated or reviewed, and
  - d. requests for information pertaining to the bank's complaints process were not responded to in a timely manner or only partially responded to.
55. From a file review perspective, the Audit also noted various instances where the bank had not identified a complaint appropriately, and/or acknowledged and responded to a complaint in a timely manner.

### **The BCCC's position**

56. The BCCC notes that the bank's approach to complaints management, as outlined in the Audit, does not comply with the obligations in ASIC's RG 165 which sets the industry standards for Internal Dispute Resolution (IDR) processes.
57. Therefore, the BCCC finds that the bank has breached clause 37.2 of the 2013 Code.
58. The Audit report identified a total of nine deviations by the bank from section 22 of the DCG across the 348 individual loan files.
59. As this breach affected more than one customer, the BCCC considers the bank's breach of clause 37 to be systemic. Further, as identified by the Audit findings, there is a shortfall in the business unit's ability to identify compliances in the first instance, suggesting that a wider proportion of customers would have been impacted by this breach.
60. The BCCC expects banks to provide effective and efficient complaints handling and dispute resolution to improve customer outcomes by resolving complaints as fairly and quickly as possible through an IDR framework.
61. IDR processes are an important element of a bank's overall relationship with its customers and failure to implement or adhere to IDR processes can directly impact the wellbeing of customers and in many cases, cause financial loss.

62. Therefore, the fact that the business unit did not have specific complaints management procedures and no comprehensive complaints management training was provided to staff is of significant concern to the BCCC.

63. For the reasons outlined above, the BCCC finds the bank's breach of clause 37 to be serious.

### Clause 24 of the 2013 Code

64. Clause 24 of the 2013 Code required banks to have a general duty of confidentiality towards its customers, in addition to its duties under the *Privacy Act 1988* (Privacy Act).

### Audit report findings

65. Section 1 of the DCG, describes that relevant organisations should have appropriate processes to protect the privacy of debtors. Similarly, section 8 of the DCG:

- a. lists key privacy obligations as per the Office of the Australian Information Commissioner's (OAIC) Australian Privacy Principles (APP), and
- b. refers to the legal obligations under the Privacy Act which are designed to protect the privacy of debtor's personal information.

66. A deviation from sections 1 and/or 8 of the DCG reasonably equates to a breach of the Privacy Act, and in turn a breach of clause 24 of the 2013 Code.

67. The Audit report identified instances where the bank did not comply with sections 1 and 8 of the DCG. Examples of these instances include:

- a. the bank recording an incorrect email address within an underlying system and proceeding to attempt to contact the relevant customer over a number of years through this mechanism.
- b. the bank sending a notice of demand containing customer details to a generic email inbox.
- c. the bank releasing a customer's information to an unrelated third party, or an unverified email address without a corresponding 'bounce back'.
- d. the bank disclosing information to a third party prior to receiving explicit authorisation from the customer.
- e. A Process Server (acting on behalf of the bank) not exercising adequate care in leaving a business card at a customer's premises.

68. The Audit indicated that the privacy breaches were potentially due to a number of underlying causes, including inadequate records management systems and insufficient resourcing, and by virtue of this, limited administrative oversight. For example, the bank:

- a. did not update underlying systems with new authorised third party or Trustee details, or did not update these in a prompt manner.
- b. did not record data correctly from source documentation into its system which is used to calculate/record loan balances, arrears, customer notes and customer details.
- c. did not retain information that was referred to within notes in its system.
- d. did not update notes in its system following interactions with its customers, or upon receipt of documentation.

## The BCCC's position

69. Based on the findings of the Audit review, the BCCC finds that the bank has breached clause 24 of the Code.
70. The Audit report noted 22 instances of the bank's deviation from section 1 of the DCG and 130 instances of its deviation from section 8 of the DCG.
71. Further, the privacy deviations identified in the Audit report do not appear to be one off instances solely due to 'human error' or resourcing challenges. Rather, they occurred due to shortfalls within the bank's systems and processes. A deficiency in the system itself would have had a large scale impact on customers.
72. Therefore, the BCCC finds the bank's breach of clause 24 to be systemic.
73. Banks have a legal obligation under various legislative instruments such as the National Consumer Credit Protection Act 2009, the Corporations Act 2001, and DCG to protect the confidentiality of existing and former customers.
74. It is vital that a bank's records management system is on par with industry standards and the bank ensures all personal information it collects from customers is accurate, complete and remains up-to date. Even a minor privacy breach could have a flow on effect and result in harm to some customers.
75. For these reasons, the BCCC finds the bank's breaches of clause 24 of the 2013 Code to be serious.

## Clause 9 of the 2013 Code

76. Clause 9 of the 2013 Code required banks to train their staff so that they:
  - a. can competently and efficiently discharge their functions in compliance with the Code, and
  - b. have an adequate knowledge of the Code and its application.

## Audit report findings

77. The Audit report found that the bank did not:
  - a. provide formal financial difficulty training to the business unit's financial difficulty team at initial roll-out or for new entrants to the team. Rather, the bank opted for an 'on-the-job' approach
  - b. have in place formal police/procedure/principles to guide the financial difficulty assessment process, or
  - c. provide formal complaints management training to the business unit's staff members.
78. In response to the Audit review findings, the bank stated:
  - a. The business unit's staff members completed all mandatory training which included both the DCG and the Code training and attended mandatory customer feedback management training that covered the handling of complaints.
  - b. A representative from the wider bank's financial difficulty team provided financial difficulty training when these processes were first established, and subsequently new staff were provided 'on-the-job' training by existing staff members of the business unit.

## The BCCC's position

### *Financial difficulty training*

79. The BCCC considers that financial difficulty obligations play a significant role in ensuring customers receive assistance from banks to enable them to make suitable and alternative payment arrangements during difficult times.
80. The BCCC expects banks to apply high standards and to take due care and attention when delivering financial difficulty training as comprehensive training is essential for staff members to be able to identify and appropriately respond to financial difficulty indicators or requests.
81. The CCMC's [2018 Financial Difficulty Report](#) recommends that banks adopt an effective training program that ensures customer facing staff receive appropriate financial difficulty training relevant to their work and ensure such training is provided at induction with regular refreshers.
82. The 2018 Report emphasises that whatever their specific role, and whether the signs are obvious or subtle, all staff need to be aware of financial difficulty and have knowledge of how to identify customers who may need assistance.
83. The BCCC considers there are compliance risks associated with 'on-the-job' financial difficulty training as it may not cover fundamental requirements, such as being able to identify customers experiencing financial difficulty.
84. The BCCC expects financial difficulty training to be separate and standalone training provided as part of the mandatory induction training, especially within a debt collection team. However, the bank did not provide this level of training until 2019.
85. The 'on-the-job' or 'once-off' training provided between 2014 – 19 falls short of the BCCC's expectation to ensure staff can competently and efficiently discharge their functions in compliance with financial difficulty obligations.

### *Complaints management training*

86. The bank confirmed that prior to July 2017, it found no evidence of a formal complaints training program having been adopted by the business unit, beyond basic dispute resolution guidance provided by the Code module.
87. Complaints management training should equip staff members with the knowledge and capability to identify, record and manage complaints within the bank's complaints management system and this cannot be achieved by simply educating staff members on their obligations under the Code.
88. The BCCC does not consider that basic dispute resolution training based on the Code provision would have enabled staff to competently and efficiently discharge their functions with regards to complaints management.
89. Further, the Audit review found that the bank did not maintain a separate complaints handling team, complaints management framework or system to manage customer complaints. Without the basic framework or systems in place to manage complaints, the BCCC is not satisfied the training provided to staff members was extensive enough to prepare them for real-life scenarios.

### *Privacy and records management training*

90. The Audit review recommended that:
- a. mandatory Privacy training provided by the bank should be detailed enough to cover requirements under the General Data Protection Regulation (GDPR) and the APP, and
  - b. the business unit's staff members complete records management training and be provided training targeted at customer communications, which could be interpreted as advice, to emphasise to staff that this type of communication should not be provided to customers.
91. While the Audit review findings do not conclude that the bank did not provide training on privacy, records management or provision of advice, the recommendations highlight the inadequacy of the training provided.

### **The BCCC's position**

92. The BCCC acknowledges that relevant and applicable training was provided to the business unit's staff members either at induction or while on the job. However, some of the training provided, particularly in relation to financial difficulty and complaints management, was not adequate or comprehensive.
93. Therefore, the BCCC finds that the bank breached clause 9 of the 2013 Code.
94. Training was not identified as a thematic root cause of the issues in this matter. Inadequate systems, process and resourcing were the reasons why the bank could not cope with the influx of collection activity.
95. An effective compliance framework is a vital mechanism for supporting staff members to understand and abide by their Code obligations, recognise when Code breaches occur, and report them on a timely basis.
96. The BCCC considers that without appropriate frameworks and measures in place to support staff members during the time of the influx, the bank would have inadvertently faced difficulties in providing comprehensive and thorough training to staff members.
97. The 2013 Code contains several other obligations that are principle based, for example staff must act 'fairly, reasonably and ethically' when engaging with customers.
98. If the bank did not ensure its business unit had the right capabilities and competency to comply with all provisions of the 2013 Code, it was highly likely there would be detrimental consequences for customers who are provided a financial service by the business unit.
99. For these reasons, the BCCC finds the bank's breach of clause 9 to be systemic and serious.
100. The BCCC acknowledges the bank has taken steps to adequately address the shortfalls identified in the Audit in relation to staff training. The bank has ensured that its business unit staff members have completed all compulsory mandatory training and is also committed to providing additional training where required.

## Clause 36(g) of the 2013 Code

101. Clause 36(g) of the 2013 Code required banks to co-operate and comply with all reasonable requests of the CCMC in pursuance of its functions.

### The BCCC's position

102. During the early stages of the investigation in 2017, the bank failed to co-operate and comply with its obligations under clause 36(g) by providing inaccurate and inadequate responses to the CCMC's information requests.

103. The bank acknowledged that a number of the responses it provided were not specific, comprehensive and/or facilitative to assist the CCMC's resolution of its queries. It accepted that the bank's approach during early investigation was inconsistent with the manner by which it engages with regulatory authorities, key oversight and industry bodies and other stakeholders.

104. As such, the BCCC finds that the bank has breached clause 36(g) of the 2013 Code.

105. Based on a review of the initial responses provided by the bank, the CCMC issued a Notice of Proposed Determination (NOPD) in this matter on 1 November 2018. This NOPD proposed to determine that there was insufficient evidence to find that the bank breached clauses 32.1 and 28.2 of the 2013 Code.

106. However, based on further information provided by the party that referred the matter, the CCMC found that the bank's responses contained inaccurate responses and on 12 December 2018, the CCMC withdrew the NOPD.

107. The bank had delayed and complicated the CCMC's review and analysis of responses by providing inaccurate and inconsistent information and this is of serious concern to the BCCC. The BCCC also notes that prior to May 2018, the bank did not have appropriate processes in place to assess and check responses before they were sent to the CCMC.

108. As inaccurate and misleading information provided by a bank could have significant implications on the BCCC's efficiency in monitoring Code compliance, the BCCC considers the bank's breach of section 36(g) of the 2013 Code to be serious.

109. The BCCC however acknowledges that the bank's level of engagement and the quality of responses to the issues raised in this investigation notably improved after May 2018.

110. Since May 2018, the bank has implemented changes to its approach to provide additional oversight of responses to the CCMC and BCCC and ensure responses are clear and accurate.

## Clause 3.2 of the 2013 Code

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

### The BCCC's position

112. The BCCC considers that the bank's breaches of various provisions of the Code (as outlined throughout the Finding) has resulted in the bank breaching its obligations



under clause 3.2 to act fairly and reasonably towards its customers in a consistent and ethical manner.

113. The BCCC's [Guidance Note No 2 – Fair, Reasonable and Ethical behavior](#) (Guidance Note 2) provides guidance on how the BCCC assesses compliance with clause 10 of the 2019 Code of Banking Practice (2019 Code) which requires banks to engage with its customers in a fair, reasonable and ethical manner.
114. The BCCC notes that clause 10 of the 2019 Code outlines similar requirements as clause 3.2 of the 2013 Code. Therefore, the BCCC has used Guidance Note 2 to inform its assessment of the bank's conduct in respect to clause 3.2 of the 2013 Code.
115. In accordance with Guidance Note 2, the bank's obligations under clause 3.2 extend to the design of its products and services, marketing and sales practices, processes and policies, and should be considered by the bank when engaging third parties to act on its behalf.<sup>3</sup>
116. As outlined throughout this Finding:
- a. The bank's breaches of all seven provisions of the 2013 Code are serious.
  - b. The bank's breaches of six out of seven provisions of the 2013 Code are systemic.
  - c. The bank delayed and complicated the CCMC's review and analysis of responses by providing inaccurate and inconsistent information during the early stages of the investigation.
  - d. The bank did not have adequate systems, processes or resourcing for a period of four years to enable it to comply with the 2013 Code.
  - e. The bank's breaches have impacted or likely impacted a not insignificant number of customers and resulted in financial and/or non-financial loss for these customers.
117. The Audit review also recommends that the bank review contracts with third parties (for example, Process Servers) to check that adequate privacy provisions are included in these contracts. This indicates that the bank has not sufficiently ensured that its third party contracts incorporate adequate privacy provisions.
118. Further, in the early stages of the investigation, the bank demonstrated a lack of due care and attention when undertaking compliance checks across its loan portfolio to ensure its business unit was complying with the Code.
119. The bank's lack of compliance oversight across its loan portfolio led to its failure to build a strong compliance structure and framework that can robustly identify, investigate, record and report instances of non-compliance within the business unit. The BCCC finds this led to numerous systemic and serious breaches which impacted many of the business unit's customers.
120. For the reasons outlined above, the BCCC is not satisfied that the business unit's engagement with its customers:
- a. was guided or informed by clause 3.2 and the key commitments outlined under Part C of the 2013 Code, and
  - b. met the community's standards and expectations.

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<sup>3</sup> Paragraph 9 of [Guidance Note 2](#).

121. Therefore, the BCCC finds the bank breached clause 3.2 of the 2013 Code.
122. The key areas of the DCG/Code provisions which resulted in potential Debtor impact related to the provision of information and documentation, debt collection activity and financial difficulty. These are considered critical obligations under the Code as non-compliance could likely result in significant harm caused to customers.
123. The BCCC considers that the bank's conduct, as outlined throughout the Finding, has serious detrimental consequences for customers, especially those experiencing vulnerable circumstances. The bank failed to provide its customers sufficient care, assistance and support when providing financial services, for example, the bank:
- a. was inflexible when customers requested financial difficulty assistance due to serious illness, hospitalisation or when a death in the family had occurred.
  - b. did not provide sufficient time for a customer to see a financial counsellor prior to continuing collection activity.
  - c. released a customer's information to an unrelated third party.
  - d. rejected appropriate and adequate third party authorisations.
  - e. disclosed information to a third party prior to receiving explicit authorisation from its customer.
124. Taking into account the severity of the breaches, the scale of impact it would have had on the customers overall and the bank's non-cooperation with the CCMC during the early stages of the investigation, the BCCC finds the bank's breach of clause 3.2 to be serious.

## Remediation

125. Following the Audit review, the BCCC acknowledges several actions have been undertaken by the bank to remediate the breaches.
126. Most of the issues were addressed by the bank's decision to restructure its current business unit, resulting in all collection and hardship activity being transferred to the wider bank's financial difficulty team (FD team). The business unit being integrated with the banks' wider operations means that:
- a. all inbound collection calls made to customers are recorded utilising the same recording systems as the FD team
  - b. the business unit's staff members have completed all mandatory training modules, worked alongside FD team staff and followed FD team's processes, procedures and oversight requirements
  - c. all existing and new financial hardship requests have been updated to the FD team's database and are reviewed by Team Managers
  - d. there are more staff available to support any unexpected increase in workload
  - e. any complaints received to the business unit are registered in the complaints register and managed in accordance with the FD team's procedure with respect to review and management of complaints
  - f. the business unit's staff members maintain a log of their interactions with customers which is subject to quality analysis process to ensure each interaction meets the required standard and process, and
  - g. the business unit accepts verbal authorisation from customers, however also follows up to seek written authorisation.
127. The bank will be undertaking a compliance review of its business unit's activities in October 2020. This review will cover the first full quarter's operations of the business unit after it was transferred to bank's FD team.



128. The BCCC is satisfied that by moving the business unit's operations into the bank's wider functions, the business unit will benefit from the relevant customer engagement and continuous compliance activities underway across the broader banking group.
129. The bank will also be undertaking an assessment of the impact of any failure by the bank to comply with the Code in relation to the loan portfolio. The objective and review of this scope is to:
- a. identify any customers who sought financial difficulty assistance from the bank and were adversely impacted by the bank's non-compliance with the Code
  - b. assess appropriate remediation for any customers so impacted, and
  - c. implement payment of remediation.
130. Given the number of customers impacted and the complexity of remediating them, the BCCC understands that customer remediation will be ongoing for the bank.
131. Overall, the BCCC recognises the extensive work undertaken by the bank to address the shortfalls identified in the Audit review and ensure continued compliance with the Code.

## Application of sanctions

132. Clause 2.1 of the BCCC's Charter states that the BCCC may monitor and investigate banks' compliance with the 2013 Code in accordance with the principles and powers set out in the Charter.
133. Section 7.1 of the Charter gives the BCCC power to apply sanctions for serious or systemic breaches of the Code while section 7.2 of the Charter allows the BCCC to use its discretion to determine which sanctions to apply after considering the seriousness of a Code breach.<sup>4</sup>
134. For the reasons outlined in paragraphs 116 – 124 of this Finding and considering the remediation actions undertaken by the bank, the BCCC intends to publicly name the bank and its business unit in its Annual Report and on its website for non-compliance with the 2013 Code (as per clause 7.2(e) of the BCCC Charter).



**Ian Govey AM**  
**Independent Chairperson**  
**Banking Code Compliance Committee**

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<sup>4</sup> Section 7.1 of the BCCC Charter states '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: (a) the breach is serious or systemic; (b) the bank had failed to act on BCCC's request to remedy a breach, or failed to do so within a reasonable time; (c) there has been a breach of an undertaking given to the BCCC; or (d) the bank has not taken adequate steps to prevent a serious or systemic breach from reoccurring'.

## Relevant 2013 Code obligations

### Clause 32.1:

*We [the bank] 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 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 37:

*37.1 We will have an internal process for handling disputes with you which is free and accessible*

*37.2 If you are (a) an individual... 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)*

### Clause 24:

*We acknowledge that, in addition to our duties under the Privacy Act 1988, we have a general duty of confidentiality towards you...*

### 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 36(g):

*We agree:*

*...*

*(g) to co-operate and comply with all reasonable requests of the CCMC in pursuance of its functions;*

### 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.*