

Banking Code Compliance Committee

FINDING

Subject	CX4213
2013 Banking Code of Practice obligations	Clauses: 3.2, 37.2
Date of this document	13 August 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](#) (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 CX4213 was initiated by the CCMC in October 2017 and since 1 July 2019, the BCCC has 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 a Notice of Proposed Finding (Notice) to both parties, following an investigation of the allegations made by a customer. Both parties were given an opportunity to respond to the BCCC's Notice.
7. Having considered the responses received from both parties, the BCCC finds that the bank breached the following 2013 Code obligations:
 - i. clause 37.2 (internal dispute resolution), and
 - ii. 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 a customer.

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

Timeline

Complaint	Date	Event
Complaint 1	10 September 2015	The customer lodged a complaint with the bank about: <ul style="list-style-type: none">the bank's service standards and quality, andinformation provided by the bank.
	15 September 2015	The bank provided its final response to the customer's complaint.
Complaint 2	24 January 2017	The customer lodged a complaint with the bank about: <ul style="list-style-type: none">the level of contact from the bank, anda request for copies of statements for their accounts.
	27 January 2017	The bank provided its final response to the customer's complaint.
Complaint 3	1 March 2017	The customer lodged a complaint about duplicated payments. The bank closed this complaint because it was a follow up to an ongoing dispute lodged with an External Dispute Resolution (EDR) scheme.
Complaint 4	22 March 2017	The bank opened a new complaint about the customer's disputed transactions.
	18 April 2017	The bank provided its final response to the customer's complaint.

The BCCC's findings

Clause 37.2 of the 2013 Code

12. 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's) [Regulatory Guide \(RG\) 165](#).

13. The bank acknowledged that its response to the customer on 15 September 2015, in relation to *Complaint 1*, failed to comply with clause 37.2 of the 2013 Code.

14. The BCCC had concerns that as a response to the customer's *Complaint 1*, the bank provided a final response to the customer after four days of attempting to contact them. The BCCC was concerned that these "uncontactable letters" closed a

customer's complaint without the bank making reasonable attempts to resolve the dispute.

15. Following its investigation, the BCCC is satisfied that these letters are provided to customers after reasonable attempts to resolve complaints have been made. The BCCC is also satisfied that these letters allow customers an opportunity to provide the bank with further information that may result in it commencing an investigation into the customer's concerns.
16. Nevertheless, final response letters should meet the requirements outlined in ASIC's Regulatory Guide and are expected to inform customers:
 - a. of the final outcome of their complaint
 - b. of their ability to take their complaint to an EDR scheme, and
 - c. of the contact details of the relevant EDR scheme.
17. In accepting the acknowledged breach of clause 37.2 of the 2013 Code, the BCCC considers that the letter provided to the customer (as a final response to the complaint) did not provide the details of the relevant EDR scheme or appropriately detail the customer's concerns.
18. The BCCC notes that the bank's acknowledged breach was caused by an error made by a single staff member and does not consider the bank's conduct to reflect a systemic failure to comply with clause 37.2 of the 2013 Code.
19. The BCCC acknowledges that the bank's conduct was in relation to correspondence provided to the customer several years ago and that the bank continues to monitor its IDR process to ensure it operates efficiently.
20. Further, the BCCC finds that the bank complied with its IDR obligations with respect to *Complaints 2, 3 and 4*.

Clause 3.2 of the 2013 Code

21. Clause 3.2 of the 2013 Code required banks to act fairly and reasonably towards customers.
22. The bank acknowledged that it failed to act fairly and reasonably towards the customer in respect to *Complaint 1*.
23. In issuing this Finding, the BCCC considers the bank's final response to the customer to have not met the standards of clause 37.2 of the 2013 Code, specifically to provide the customer with a referral to the appropriate EDR scheme and to detail the customer's concerns.
24. Providing customers with the details of the relevant EDR scheme is not only a requirement of the Code, it ensures that customers are treated fairly by allowing them the confidence to seek an external review of any decision made by the bank.



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 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).