

Banking Code Compliance Committee

FINDING

Subject	CX4242
2013 Code of Banking 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 CX4242 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 its Notice of Proposed Finding (Notice) to both parties, following an investigation of alleged Code breaches made by the 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 BCCC's Findings are as follows:

Timeline

Complaint	Date	Event
Complaint 1	12 February 2016	<ul style="list-style-type: none">The customer complained about the withdrawal limit on their credit card. Action: <ul style="list-style-type: none">The bank advised that the block would be removed from the account, and the complaint was closed.
Complaint 2	13 February 2016	<ul style="list-style-type: none">The customer complained that they were unable to debit more than \$145 in cash advances. Action <ul style="list-style-type: none">The bank advised the customer their feedback would be recorded, and the complaint was closed.
Complaint 3	27 April 2016	<ul style="list-style-type: none">The customer complained that the bank was unable to provide an overdraft on their personal loan outside of business hours. Action <ul style="list-style-type: none">The bank apologised to the customer, recorded their feedback and the complaint was closed.
Complaint 4	27 April 2016	<ul style="list-style-type: none">The customer complained that a credit check is completed as part of an overdraft application. Action <ul style="list-style-type: none">The bank provided the customer with an explanation, recorded their feedback and the complaint was closed.
Complaint 5	14 September 2016	<ul style="list-style-type: none">The customer complained that the gambling transactions on their credit card was carried out under the influence of drugs and requested the bank to cancel the transactions. Action <ul style="list-style-type: none">The bank advised the customer that the transactions were not fraudulent, and that they should speak to the merchant, or the bank's hardship team. The complaint was closed.
Complaint 6	15 February 2017	<ul style="list-style-type: none">The customer said they would not make any further payments to their accounts and that they would take court action.The customer requested a copy of their credit card contract.

		<p>Action</p> <ul style="list-style-type: none"> The bank advised the customer that they would send them a copy of their credit card contract and the complaint was closed.
Complaint 7	17 February 2017	<ul style="list-style-type: none"> The customer said they would not make any payments to their accounts, as the bank falsified statements. <p>Action</p> <ul style="list-style-type: none"> The bank advised they would rely on copies of its call recordings and closed the complaint.
Complaint 8	28 February 2017	<ul style="list-style-type: none"> The customer complained that the bank allowed many transactions to go through on their credit card. <p>Action</p> <ul style="list-style-type: none"> The bank apologised to the customer and the complaint was closed.
Complaint 9	9 March 2017	<ul style="list-style-type: none"> The customer complained about being provided inconsistent information throughout their disputes. <p>Action</p> <ul style="list-style-type: none"> The bank informed the customer that all disputes were recorded, explained the complaints process and the complaint was closed.
Complaint 10	2 June 2017	<ul style="list-style-type: none"> The customer informed the bank they would take it to court. The customer requested copies of their credit card and deposit account statements. <p>Action</p> <ul style="list-style-type: none"> The bank advised the customer that their credit card account was not being charged interest and therefore they could not access their account online. The bank also informed the customer that they needed to speak to the general enquiry line and their complaint was closed.
Complaint 11	14 December 2017	<ul style="list-style-type: none"> The customer complained that their credit card had been setup and re-issued incorrectly. <p>Action</p> <ul style="list-style-type: none"> The bank advised the customer that their card setup could not be changed, and a new card would need to be ordered and their complaint was closed.
Complaint 12	23 December 2017	<ul style="list-style-type: none"> The customer complained that they were unable to use their credit card beyond the limit. <p>Action</p> <ul style="list-style-type: none"> The bank apologised to the customer and their complaint was closed.

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 it breached clause 37.2 of the 2013 Code in respect to Complaints 5, 6, 7, 8, 10 and 12 by failing to provide a final response to the customer's complaint.
14. RG165.80 states that banks have five business days to attempt to resolve a customer's complaint to their complete satisfaction before applying the full IDR process.
15. Further, RG165.90 requires banks to provide a final response to a customer's complaint within 45 days.
16. The BCCC accepts the bank's acknowledgement that it breached clause 37.2 of 2013 Code, because:
 - a. *Complaints 5, 6, 7, 8, 10 and 12* were closed at the first point of contact without being investigated in accordance with the relevant IDR processes.
 - b. The customer explicitly expressed dissatisfaction on numerous occasions and the bank's system file notes did not indicate that these complaints were resolved to the customer's complete satisfaction before being closed.
 - c. The bank's file notes indicate it did not make sufficient attempts to resolve the customer's complaint to complete satisfaction, as it recorded the customer's dissatisfaction as feedback and closed the file at the first point of contact.
 - d. The bank did not provide a final response to the customer's complaints.
17. The BCCC notes that since the commencement of this investigation, the bank has taken steps to reopen and resolve the customer's complaints and provide remediation.
18. The BCCC acknowledges that the bank has taken steps to improve its frameworks and procedures to ensure ongoing compliance with RG 165. Nevertheless, the BCCC has some concerns about the bank's process for closing customer complaints at the first point of contact and may conduct further inquiries at a later date to examine this issue.

Clause 3.2 of the 2013 Code

19. Clause 3.2 of the 2013 Code required banks to act fairly and reasonably towards customers.
20. The bank acknowledged it failed to act fairly and reasonably towards the customer as it did not:
 - a. provide the customer with a written final response for Complaints 5, 6, 7, 8, 10 and 12, and
 - b. recognise the impacts of the customer's circumstances, in particular their problem gambling, drug use and mental health issues.
21. In acknowledging a breach of clause 3.2 of the 2013 Code, the bank accepts there were indicators on the customer's file that should have prompted further inquiry into their vulnerable circumstances.
22. The BCCC notes the bank has taken steps to improve its policies and procedures to comply with the Code's IDR obligations and identify customers experiencing vulnerable circumstances.



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).