

# Banking Code Compliance Committee

## FINDING

<b>Subject</b>	<b>CX6933</b>
<b>Code-subscribing Bank</b>	<b>Members Equity Bank Limited (ME Bank)</b>
<b>2019 Banking Code of Practice obligations</b>	<b>Chapter 38 and Clauses 17, 10 and 9</b>
<b>Date of this document</b>	<b>21 April 2021</b>

## Introduction

1. The Banking Code Compliance Committee (BCCC) is an independent compliance monitoring body established under clause 207 of the [Banking Code of Practice](#) (Code). Its purpose is to monitor and drive best practice Code compliance.
2. The BCCC's powers are set out in Chapter 49 of the Code. One of the BCCC's powers is to investigate and determine an allegation from any person that a Code-subscribing bank (bank) has breached the Code.
3. In May 2020, the BCCC commenced targeted inquiry CX6933 into ME Bank's decision to adjust redraw amounts on some legacy home loan accounts, as a result of three Code breach allegations it received from customers.
4. The BCCC issued its Notice of Proposed Finding (Notice) to ME Bank, following an investigation into ME Bank's compliance with the Code. ME Bank was provided an opportunity to respond to the BCCC's Notice.
5. Having considered ME Bank's response to the Notice, the BCCC issues this Finding in accordance with clause 211(e) of the Code, clause 6 of the BCCC Charter and Appendix 3 of its [Operating Procedures](#).
6. **Appendix 1** to this Finding contains [good practice guidance](#) to assist banks to continually improve their compliance with the Code.

## Summary of Findings

7. The BCCC finds that ME Bank:
  - a. breached the following Code obligations:
    - i. Clause 17 (timely, clear and useful communication), and
    - ii. Clause 10 (fair and reasonable conduct)
  - b. did not breach the following Code obligations:
    - i. Chapter 38 (changes to terms and conditions)
    - ii. Clause 9 (staff training and competency)
8. 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.
9. The BCCC finds that ME Bank's breach of:
  - a. clause 17 is systemic, and
  - b. clause 10 is both systemic and serious.
10. The BCCC will also publicly name ME Bank on its website and in its 2020-21 Annual Report for non-compliance with the Code.

## Background

### Commencement of targeted inquiry CX6933

11. In May 2020, the BCCC received Code breach allegations from customers regarding ME Bank's decision to change redraw facility limits on their home loans. These customers alleged their available redraw amounts were changed on 27 April 2020 without prior notification from the bank.
12. As a result of these Code breach allegations, the BCCC commenced a targeted inquiry to examine ME Bank's compliance with the Code when it adjusted the available redraw amounts on customers' accounts.

### Redraw Event

13. ME Bank started migrating all its customer products and services from its legacy system to its new platform in around 2014/2015. ME Bank has now completed the migration of its customers' deposit and personal loan accounts and is currently in the process of transferring its home loan accounts across to the new platform.
14. In October 2019, ME bank identified that some customers within the old system, who had made repayments ahead of their schedule on their home loan, had an amount showing as an available redraw amount which would, if withdrawn in full, take the loan's actual balance above the original scheduled balance.

15. The redraw issue arose because, following an interest rate change, minimum repayment amounts (MRA) were re-calculated based on the current loan balance (including any prepayments) rather than the scheduled loan balance (excluding prepayments). Therefore, any customer who had made prepayments, would see their MRA reduced.
16. As the available redraw amount only reduces when a MRA is not paid in part or in full, provided the customer continues to pay the reduced MRA, the available redraw amount will not reduce and so is available in full at any time during the loan term.
17. If customers access their available redraw amount taking the loan's actual balance above the original scheduled balance:
  - a. customers making the minimum repayment will experience an increase in their regular repayment the next time MRA is calculated, or
  - b. if the MRA is not recalculated, customer may end up being required to make a balloon payment at the end of the loan term.
18. ME bank first discovered this issue with its old system in December 2011 and its proposed plan during that time was to contact customers who were already above their amortisation curve (where the loan's actual balance was above the original scheduled balance) to advise that their available redraw amount would be adjusted. This plan was enacted between April 2013 and December 2015.
19. However, the plan was compromised in 2015 because of personnel changes. From that point forward, the number of customers drawing above their amortisation curve schedule increased until the issue was re-identified in October 2019.
20. From December 2019 to February 2020, ME Bank established a working group to explore a technical solution to the issue and assess the impact to customers.
21. In March 2020, ME Bank decided to adjust the available redraw amount held in the accounts that were affected by the redraw issue. ME Bank proceeded to make the changes to some customers' available redraw amounts in April 2020.

## The BCCC's Findings

### Chapter 38 of the Code

22. Clause 151 states that banks may change terms and conditions of banking services in certain situations without the customers' agreement.
23. Clauses 152 – 154 require the bank to tell the customer about the change as soon as possible and if the bank believes the change is unfavourable to the customer, it should provide at least 30 days notice (subject to clause 155).<sup>1</sup>

---

<sup>1</sup> Clause 155 states that the bank may give shorter notice period, or no notice, of an unfavourable change if a) it believes doing so is necessary for the bank to avoid or reduce a material increase in its credit risk or loss or b) there is a change to, or an introduction of a government charge that the customer pays as part of their banking service.

## The BCCC's position

24. ME Bank's Standard Home Loan Terms and Conditions (terms and conditions) provide the definition of 'available funds' as:

*...the amount, if any, by which your loan account is prepaid. This amount is calculated by taking the difference, if any, between:*

- a) your actual loan balance... and*
- b) what your loan balance would have been at the draw date had you made all repayments due up to that date on time but made no additional repayments.*

25. The redraw issue arose because, following an interest rate change, minimum repayment amounts were recalculated based on the current loan balance rather than the scheduled loan balance.
26. As the available redraw amount only reduced when a minimum repayment is not paid or not paid in full, the available redraw amount will not amortise and so is available in full at any time during the loan period.
27. The BCCC accepts that the changes ME Bank made to its customers redraw facilities are not a change to the terms and conditions but rather, an adjustment made to accurately reflect the definition provided for in the terms and conditions.
28. The BCCC therefore finds that ME Bank did not breach Chapter 38 of the Code in these circumstances.

## Clause 17 of the Code

29. Clause 17 requires banks to communicate with customers in a timely manner and give them information that is useful and clear.
30. As per its Communication Plan developed in March 2020, ME Bank segmented its customers into three categories, as set out in the table below:

Category	Details	Communication timeline
1 – Green Customers	Customers who would not be placed above their amortisation curve if they made a full redraw, therefore no adjustment was needed.	No communication was required.
2 – Amber customers	Group 1 Customers who did not use internet banking (the only place where MRA was displayed) and/or were not active users of their redraw facility.	No communication was provided.

	<p>Group 2</p> <p>Customer who used internet banking and were active users of their redraw facility.</p>	<p>Adjustments to their available redraw amount commenced on 27 April 2020.</p> <p>Letters were prepared on and dated 23 April and subsequently posted on 28 April 2020.</p>
3 – Red customers	<p>Customers were split into five groups based on whether there was a history of arrears and whether they had any available redraw amount to be adjusted.</p> <p>Those at greatest risk were to receive a call to advise of the change prior to any adjustments being made.</p>	<p>The adjustments and communications were placed on hold post 29 April 2020.</p>

31. In March 2020, ME Bank made the decision to adjust the available redraw amount for all ‘Amber’ and some ‘Red’ customers. The adjustments and communication for ‘Red’ customers were placed on hold post 29 April 2020.
32. For the purposes of this Finding, assessment of whether ME Bank complied with clause 17 has been limited to ‘Amber’ customers.

## The BCCC’s position

### Category 2 / Amber customers – Group 1

33. The adjustments made to Group 1 Amber customers were not communicated to them prior to or after the adjustment was made because these customers either had no access to internet banking or were not active users of internet banking.
34. ME Bank offered a financial service to these customers at the time they took out their credit facility and the bank has a commitment under the Guiding Principles of the Code to be transparent in its communications with customers.
35. ME Bank should have provided effective and efficient communication regarding any changes to all impacted customers, regardless of whether they had access to internet banking or not.
36. The BCCC is not satisfied that ME Bank chose to stay silent about the inaccurate available redraw balance on the accounts of these customers for a number of years and did not inform them about the adjustments when it eventually made them.
37. The BCCC therefore finds that ME Bank has breached clause 17 of the Code by not providing any communication to Group 1 Amber customers prior to or after adjustments were made to their redraw facility.

## Category 2 / Amber customers – Group 2

38. The adjustments to redraw accounts of Group 2 Amber customers (active users of internet banking) commenced on 27 April 2020 and the notification letters were posted to customers on 28 April 2020 via mail.

### *Timely communication*

39. In these circumstances, the BCCC considers that notification provided *prior* to the adjustments was pertinent for the following reasons:
- a. there was a significant number of customers who were impacted (approximately 20,000)
  - b. these impacted customers lost access to an average of \$17,000 which would be a substantial amount of money for some customers especially during a health pandemic which resulted in unemployment, lockdowns, increased anxiety and financial uncertainty
  - c. ME Bank was first aware of its system deficiencies in 2011 however failed to take corrective actions to rectify the issue, therefore resulting in incorrect available redraw amounts reflected on some home loan accounts over a number of years
  - d. some customers may not have an in-depth understanding or knowledge on how a redraw facility works. Therefore, the bank needed to provide clear and sufficient information to customers on why and how their redraw facility had been impacted prior to making any adjustments
40. Further, a customer, who raised Code breach allegations with the BCCC, claimed she did not receive the notification letter until 6 May 2020. This shows a potential lapse of time between the adjustments being made and the customers being notified; resulting in a period of time where Group 2 Amber customers would have been confused and concerned that the funds they previously had access to had been reduced without any proper explanation.
41. While ME Bank's changes to redraw facilities may prevent customers from experiencing financial hardship in the future, there is a possibility that some customers may experience financial hardship in the short term due to loss of accessible funds.
42. However, if customers were given information on why the adjustments were made and the risks involved if they chose to maximise their available redraw amount prior to the adjustments being made, the customer could then make an informed decision on how they want to manage their financial affairs.
43. The Code's Guiding Principles outline the banks' commitment to earning and retaining the trust of customers and the community. The BCCC considers that sustaining a transparent and open communication with customers is important for banks to create that trust.
44. Taking into consideration the reasons above, the BCCC's position is that 'timely' communication means advance communication in these circumstances.

### *Method of communication*

45. ME Bank sent letters to Group 2 Amber customers only via mail to inform them of the adjustments to their redraw facility.
46. Letters sent via mail may take some time to reach customers and this is likely to be further delayed during circumstances such as a health pandemic when Australia Post may experience significant delays.
47. As such, ME Bank should have considered more than one method of communication, including those that are less likely to be affected by delays, such as email, SMS or internet banking messages to inform customers of the adjustment.
48. Given the BCCC's position is that advance communication should have been provided to customers in this instance, the BCCC expected ME Bank to have sent any type of communication at least seven business days (longer if by Post) prior to the adjustments to provide the customer an opportunity to consider next steps.

### *Clear and useful communication*

49. ME Bank's notification letter, posted on 28 April 2020, shows that clear and useful information was provided to customers as it explained the changes ME Bank made and provided assurance that the bank will support and assist those financially impacted by COVID-19.
50. The letter also provided the customers an opportunity to contact the bank to discuss other options available if they have been considering the redraw as one option for additional funds and if the new limit is not enough, for example reinstatement of the redraw amount if the bank was satisfied this would not put them at risk of not being able to repay their loan.
51. However, the BCCC considers that, in this case, untimely communication defeated the purpose of the information being clear and useful as customers did not receive the notification until a few days after the adjustments.

### *Awareness of the issue since 2011*

52. If ME Bank had taken steps to rectify the redraw issue in 2011, the number of customers drawing above their amortisation schedule would not have increased.
53. Providing notification prior to making adjustments was particularly pertinent in this regard because:
  - a. ME Bank had previous knowledge of an error in its system resulting in incorrect available redraw balances for customers but did not disclose this to them for a number of years, and
  - b. ME Bank's lack of oversight of its systems has put some Green category customers in 2011 currently over the amortisation curve of their scheduled balance (Amber category).
54. While ME Bank was not a signatory to the 2004 or 2013 Banking Codes, the BCCC still considers that ME Bank's historical actions dating back to 2011 are relevant and have a direct bearing on ME Bank's conduct in 2019 and 2020.

55. For the reasons outlined from paragraphs 34 to 54 of this Finding, the BCCC finds ME Bank breached clause 17 of the Code by not providing timely, clear and useful information to the customers regarding changes to their redraw facility.

56. ME Bank noted that 21,790 Amber customers had their redraw limit adjusted between 23 and 27 April 2020. As a significant number of customers have been impacted by ME Bank's breach of clause 17, the BCCC considers this breach to be systemic.

## Clause 9 of the Code

57. Clause 9 of the Code requires banks to train their staff so that they:

- a. can competently do their work, and
- b. understand the Code and how to comply with it when they are providing banking services

## The BCCC's position

58. It was pertinent for ME Bank staff to be trained to deal with customers enquiring about the changes to their redraw facility in a fair and reasonable manner, given that customers were informed after the fact, and taking into consideration the stressful environment caused by COVID-19.

59. ME Bank provided training to its staff between 20 – 24 April 2020, to deal with the changes being made. ME Bank also implemented its standard communication and training process to prepare its frontline servicing teams to be ready to deal with the redraw issue by 27 April 2020.

60. The BCCC is satisfied that:

- a. specific training was provided to a dedicated team of call centre employees for a hotline for customers in relation to their redraw facilities, and
- b. staff members received training to deal with the redraw changes prior to the changes taking place.

61. Therefore, the BCCC finds that ME bank complied with clause 9 as it made sure its staff are trained so that they can competently do their work.

## Clause 10 of the Code

62. Clause 10 of the Code requires banks to engage with its customers in a fair, reasonable and ethical manner.

## The BCCC's position

63. As outlined throughout this Finding, the BCCC is concerned that:

- a. ME Bank had been aware of the redraw issue since 2011
- b. ME Bank did not contact customers prior to making the adjustments in 2020
- c. ME Bank's decision to change customers redraw limits was based on 'potential risks' occurring to customer accounts, and
- d. ME Bank's decision may have affected customers experiencing vulnerability.



64. Further, during this time of uncertainty as a result of COVID-19 and the economy, customers are entitled to know what amounts of money are available to them. This is pertinent to allow customers to source or make other arrangements in anticipation of any circumstances that may call for a change in their financial situation. This speaks to the Code's Guiding Principles of 'trust and confidence' and 'transparency and accountability'.
65. Customers are entitled to accurate information from their banks. Should a bank have provided customers inaccurate information at any time, the bank should inform its customers and remedy any inaccuracy as soon as possible.
66. Customers are at a higher risk of falling into financial difficulty if they rely on inaccurate financial information such as incorrect redraw amounts available to them on their redraw facilities.
67. The BCCC published [Guidance Note No 2 on Fair, Reasonable and Ethical behavior](#) which sets out the BCCC's assessment of clause 10. In reference to this Guidance, the BCCC considers that ME Bank's conduct:
  - a. is unlikely to meet with Code's Guiding Principles of 'trust and confidence' and 'transparency and accountability', and
  - b. did not meet community standards and expectations. This is evidenced by the high volume of complaints made in respect to the redraw issue, and ME Bank's own admission that adverse customer reactions resulted in no further adjustments being made to customer accounts.

#### **Customers experiencing vulnerable circumstances**

68. ME Bank should have assessed the mental health impact the adjustments may have on customers experiencing vulnerable circumstances prior to implementing the adjustments, especially during a period where the pandemic was causing prolonged lockdown and unemployment.
69. Prior notification to customers regarding the adjustment of the redraw amounts would have mitigated the risk of customers experiencing unnecessary stress of not knowing why a change was made with no prior notification or explanation. The same would have removed the risk of exacerbating the circumstances of customers who are or may be experiencing vulnerable circumstances.
70. The BCCC expects banks to be proactive and take extra care with customers who are experiencing vulnerabilities and this obligation can only be discharged if the bank applies its vulnerability lens to all its operations.
71. While ME Bank considered the long term negative financial impact of customers fully withdrawing their available redraw balance, it failed to consider the short term mental health impacts on a group of customers who may have already been suffering from vulnerable circumstances such as financial difficulty.
72. While the pandemic may have contributed to extreme stress among customers regarding their financial position, ME Bank's conduct and treatment would still have been inappropriate and unacceptable to the BCCC in any situation, pandemic or not.
73. Taking into account ME Bank's overall conduct in relation to the redraw issue and the reasons outlined in paragraphs 63 – 72 of this Finding, the BCCC finds that ME Bank has breached clause 10.

74. ME Bank has received around 400 internal complaints in respect to the redraw event and around 5,000 customers have requested their redraw limit to be reinstated (in full or part) post the redraw event. Therefore, the BCCC finds ME Bank's breach of clause 10 to be systemic.
75. The BCCC also finds ME Bank's breach of clause 10 to be serious due to:
- a. the risk customers were open to by having access to funds they were not entitled to for a number of years
  - b. the length of time it has taken ME Bank to rectify this issue (around 9 years)
  - c. ME Bank's decision to use only mail to inform customers of the changes made,
  - d. ME Bank's lack of communication with its customers navigating the COVID-19 pandemic,
  - e. ME Bank's failure to proactively assess the mental health impact of customers experiencing vulnerable circumstances prior to making the adjustments
  - f. ME Bank's failure to comply with its obligations under the Guiding principles to be accountable or transparent in its dealings with customers.

## Remediation

76. On 7 May 2020, ME Bank decided to change back redraw limits for any impacted customers who requested it. ME Bank provided a dedicated online form for customers to request this change and this form noted that customers may contact the bank to discuss their individual circumstances and implications of their available redraw, or any other options available to them.
77. All customers who had their available redraw amount reinstated were sent a letter with an accompanying flyer outlining the potential risks of accessing funds from their redraw facility. Following this, ME Bank also contacted these customers by phone or email as part of its Redraw Customer Support Program (Program).
78. This program, which ran between May 2020 and November 2020, was designed for the bank to:
- a. understand individual customers' situation and assist them based on their needs
  - b. educate customers on their redraw feature and the financial consequences of accessing redraw, and
  - c. rebuild trust with customers.
79. ME Bank has reinstated redraw amounts across approximately 5,000 home loan accounts through the Program.
80. ME Bank also undertook a Post Incident Review (Review) in November 2020. The objective of this review was to assess the redraw event which led to adverse customer response, including what occurred leading up to the event and how ME Bank can improve communication to achieve better customer outcomes in the future.
81. Through this Review, ME Bank committed to a Management Action Plan (Plan) which will include conducting a communications audit and having a defined communications model to be implemented by April 2021. The bank will also implement a customer experience framework (providing upfront input into customer communication strategies) to all product change processes.
82. ME Bank expects to implement its Plan in its entirety by 30 June 2021, subject to any unforeseen delays

83. The BCCC understands that implementing the corrective actions will be an ongoing process for ME Bank and may take some time given the proposed actions will presumably affect various business units, products and services across the bank.
84. The BCCC will continue to engage with ME Bank regarding the progress of its proposed plan.

## Application of sanctions

85. Section 7.1 of the Charter gives the BCCC power to apply sanctions for serious or systemic breaches of the Code<sup>2</sup> 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.
86. For the reasons outlined in paragraph 75 of this Finding and considering the remediation actions undertaken by the bank, the BCCC intends to publicly name the ME Bank on its website and Annual Report for non-compliance with the Code (as per clause 7.2(e) of the BCCC Charter).



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

---

<sup>2</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 Code obligations

**Clause 151:**

*The terms and conditions of a banking service may allow us to change those terms and conditions in certain situations without your agreement.*

**Clause 152:**

*If we change our terms and conditions, we will tell you about the change as soon as reasonably possible. This includes a change to:*

- a) our standard fees and charges*
- b) an interest rate.*

**Clause 154:**

*Apart from changes to interest rates or changes to repayments, if we believe a change is unfavourable to you, then we will give you prior notice of at least 30 days, subject to paragraph 155.*

**Clause 155:**

*We may give you a shorter notice period, or no notice, of an unfavourable change if:*

- a) It is reasonable for us to manage a material and immediate risk; or*
- b) there is a change to, or introduction of a government charge that you pay directly, or indirectly, as part of your banking service. In that case, we will tell you about the introduction or change reasonably promptly after the government notifies us (however, we do not have to tell you about it if the government publicises the introduction or change).*

**Clause 17:**

*We will communicate with you in a timely manner and we will give you information that is useful and clear.*

**Clause 10:**

*We will engage with you in a fair, reasonable and ethical manner.*

**Clause 9:**

*We will make sure that our staff and our representatives are trained so that they:*

- a) can competently do their work; and*
- b) understand the Code and how to comply with it when they are providing banking services.*