

BCCC Finding CX4423 – Appendix 1

Good Practice Guidance

The Banking Code Compliance Committee (BCCC) issues this guidance based on the findings it made in relation to investigation CX4423. It sets out the BCCC's expectations for how Code-subscribing banks (banks) should ensure ongoing compliance with the Code.

Compliance with the Guarantees provisions of the Code

1. As outlined in the [BCCC's Inquiry Report: Banks' compliance with the Banking Code's guarantee obligations](#), guarantees have significant legal and financial implications for consumers. If the primary borrower defaults on the loan and the guarantee is enforced, some of the risks to the guarantor include:
 - a. severe financial hardship
 - b. being forced to sell assets to pay a debt, and/or
 - c. being evicted from their home or their home being sold by the bank.
2. The BCCC therefore expects strict compliance with the bank's obligations under the Guarantee provisions of the Code, whether it be before accepting the guarantee, when executing the guarantee or during a guarantee.
3. Banks need to have robust and comprehensive systems, policies and procedures to support its compliance with the Code's Guarantee provisions. For example, having poor record keeping practices will prevent banks from identifying and assessing a Code breach. This means there is a risk that guarantors against whom enforcement action is proposed may not have been provided key information to make an informed decision about giving a guarantee.
4. The Guarantee provisions under the Code are intentionally prescriptive and if the bank does not comply with any of those obligations, it should proactively determine if the guarantee is enforceable and take appropriate actions to rectify and remediate impacted customers and guarantors.
5. While it is appropriate for banks to obtain legal advice on the validity and enforceability of a guarantee, it is also important that they avoid an overly legalistic approach. Banks' treatment of non-compliance guarantees must take into account the Guiding Principles that underpin the Code and the banks' obligations under clause 10 to engage with guarantors in a fair, reasonable and ethical manner.