



CODE COMPLIANCE MONITORING COMMITTEE PROCEDURES

1. INTRODUCTION

1.1 About the Code Compliance Monitoring Committee

The Code Compliance Monitoring Committee (“CCMC”) has been established in accordance with the Code of Banking Practice 2003 (“the Code”). Its functions are to:

- (a) monitor compliance with the Code by banks that have subscribed to the Code (“Code Subscribers”);
- (b) investigate, and make a determination on, any allegation from any person that a Code Subscriber has breached the Code, but the CCMC will not resolve, or make any determination on, any other matter; and
- (c) monitor any other aspects of the Code that are referred to the CCMC by the Australian Bankers’ Association.

The CCMC is made up of three Members – an independent Chairman, a consumer representative, and a person with relevant retail banking experience.

The CCMC is supported by a Chief Executive Officer.

1.2 Application of these procedures

These procedures apply to all complaints that are received by the CCMC.

2. RECEIPT AND INITIAL ASSESSMENT OF COMPLAINTS

2.1 Complaint referrals

It is expected that most allegations of Code breaches will be referred to the CCMC in writing. This can be done in a letter or by lodging a complaint via the online complaint form on the CCMC website.

However, the Chief Executive Officer will usually be available to discuss a complaint in general terms over the telephone.

2.2 Receipt of complaint

When a complaint is received, the following details will be entered on the CCMC database:

- (a) the CCMC case number given to it;
- (b) complainant's name, address and contact numbers;
- (c) name of financial services provider complained about;
- (d) summary of the allegation;
- (e) the code(s) for the product(s) complained about; and
- (f) relevant clauses of the Code.

The matter will then be assessed to determine if it falls within the jurisdiction of the CCMC. This assessment will include whether:

- (a) the financial services provider is a Code Subscriber;
- (b) the alleged conduct appears to have taken place at or after the date on which the Code Subscriber adopted the Code;
- (c) there is a provision (or provisions) of the Code that may be relevant to the matter; and
- (d) the matter is outside the jurisdiction for any other reason eg. where the BFSO had already made a finding on whether a breach of the Code has occurred.

2.3 Where it is clear that matter is outside CCMC's jurisdiction

Where the matter is not within the jurisdiction of the CCMC, the complainant will be advised:

- (a) why the matter is not within the CCMC's jurisdiction;
- (b) of other organisations (if any) that may be able to assist. (This may include an ADR scheme if it is apparent that a claim for compensation has been or may be made); and
- (c) of the opportunity to respond if they believe that they can establish that the matter does fall within the CCMC's jurisdiction.

2.4 Where it is unclear that matter is outside CCMC's jurisdiction

Where it is not clear that the matter falls within the CCMC's jurisdiction, the procedure for investigating a complaint will be followed.

2.5 Matter is within CCMC's jurisdiction

Where it is determined that the matter falls within the CCMC's jurisdiction, or is likely to fall within the CCMC's jurisdiction:

- (a) receipt of the complaint will be acknowledged;
- (b) the CCMC's procedures for investigating the matter will be explained; and
- (c) an authority form which the complainant must sign and return will be forwarded to the complainant. This form allows the CCMC to obtain information from, and disclose information to, the Code Subscriber.

Where it is clear that the complainant wishes to make a claim in respect of financial loss, they will also be advised:

- (a) that the CCMC cannot consider a claim for financial loss; and
- (b) that BFSO or another appropriate forum may be able to consider their claim for financial loss.

The complainant will be provided with contact details for the BFSO (or other appropriate scheme or organisation) and advised that the complainant usually cannot make the same complaint in more than one forum.

It remains open to the complainant to decide not to pursue a claim for financial loss and pursue their complaint through the CCMC.

2.6 Matter relates to a small business

Where the complaint is from a small business, the appropriate business entity will be asked to complete a Small Business Declaration and Authority form, in order to determine whether the business is a "small business" for the purposes of the Code, and to identify the person authorised to discuss the matter on behalf of the business.

If the business does not meet the small business test, the CCMC is not able to consider the matter. Similarly, if the authorised representatives of the business do not complete the authority, the CCMC will not be able to consider the matter.

2.7 Anonymous complaints

If an anonymous complaint contains a sufficient level of detail and the CCMC consider it appropriate to do so, then the CCMC can deal with the complaint in the same way as if the complainant were known (subject to the requirements to inform the complainant of progress on the matter).

2.8 Where the complainant does not want to be identified to the Code Subscriber

The complainant can choose not to authorise the CCMC to disclose their name or identifying details to the relevant Code Subscriber.

However, in such cases, an assessment must be made as to whether it is likely that, without this information, the Code Subscriber will be able to respond to the matter fully. If the view is that the Code Subscriber will not be able to respond to the allegation without the complainant's details, the complainant will be advised in writing that the file will be closed unless the complainant authorises disclosure of identity details to the Code Subscriber.

2.9 Privacy complaints

If the CCMC receives a complaint that relates to an alleged breach of the Privacy and confidentiality provisions of the Code, the complainant will be advised that they have the right to lodge their complaint with the Office of the Federal Privacy Commissioner or the BFSO instead of with the CCMC.

3 REFERRAL TO CODE SUBSCRIBER

3.1 Code Subscriber must provide written response

Once the completed authority form has been returned, the complaint will be referred to the Code Subscriber who will be requested to provide a written response to the allegations.

The Code Subscriber is given 30 days to provide a written submission to the CCMC in response to the allegations which:

- (a) addresses all of the allegations raised by the complaint;
- (b) provides accurate information; and
- (c) provides copies of all documents that are relevant to the issues raised. In some circumstances, the CCMC may request to see the originals of any copied documents provided by a Code Subscriber.

The Code Subscriber may request an extension of time to provide its response, but must give reasons for the request. If the request is considered reasonable, the Code Subscriber may be given an extension of time, which will be confirmed in writing to the Code Subscriber and to the complainant.

If the Code Subscriber believes that it is unable to provide the relevant information it should notify the CCMC promptly in writing.

4. COMPLAINT REVIEW AND DETERMINATION

4.1 Frivolous or vexatious complaints

The CCMC can determine that the complaint is frivolous or vexatious and will not be investigated. In this case, the CCMC will write to the complainant advising of the CCMC's determination, and of the fact that the matter will not be investigated.

4.2 Breach Report

After a response has been received from the Code Subscriber, or the relevant time period has passed without a response, a breach report will be prepared which identifies:

- (a) the complainant's name;
- (b) the Code Subscriber's name and date of adoption of the Code;
- (c) the complaint;
- (d) the Code Subscriber's response;
- (e) a summary of the allegation(s), including the date of the alleged breach (where this is clear), and reference to specific provisions of the Code;
- (f) confirmation that the alleged conduct relates to, or impacts on, persons who are entitled to the benefits of the Code (where this is clear). If it is not clear, a statement to this effect;
- (g) copies of relevant documents; and
- (h) any other information that might be relevant to the CCMC's consideration (including, for example, BFSO policies on the issues in question).

4.3 Consideration by the CCMC

Following receipt of the breach report, the CCMC will consider the alleged breach.

The CCMC may:

- (a) resolve to seek additional written information from the complainant or from the Code Subscriber;
- (b) resolve to invite the Code Subscriber to make a presentation to the CCMC;
- (c) resolve to seek further advice;
- (d) determine that no breach of the Code has occurred; or
- (e) determine that a breach of the Code has occurred.

However, the CCMC will not make a determination that a breach has occurred unless the Code Subscriber has been given a reasonable opportunity to make representations to the CCMC about its conduct.

4.4 Notice of proposed determination

Except where a Code Subscriber admits it has breached the Code, the CCMC must give at least 28 days notice to all parties about the CCMC's intention to make a determination in relation to a complaint. This notice must be in writing and must state:

- a) what determination the CCMC intends to make in relation to the complaint;
- b) briefly, the reasons for any conclusions about the merits of the complaint; and
- c) that the parties to the complaint have an opportunity to make further submissions to the CCMC within a reasonable time from receipt of the notice before a determination may be made by the CCMC.

4.5 CCMC determination

After the CCMC has given the parties to a complaint a reasonable time within which to make further submissions under clause 6.3, the CCMC may make a determination in relation to a complaint.

A determination made by the CCMC must:

- (a) unless otherwise agreed by the complainant and the Code Subscriber, be in writing;
- (b) include a brief explanation of the complaint;
- (c) include a statement that in CCMC's view the complaint was proven in whole or in part or was unfounded;
- (d) if applicable, state any finding by the CCMC that the Code Subscriber is responsible for serious or systemic non-compliance with the Code; and
- (e) include brief reasons for the conclusions and findings of the CCMC.

4.6 Following determination of a breach of the Code

If the CCMC determines that the Code Subscriber has breached the Code, the CCMC may:

- (a) ask the Code Subscriber to remedy the breach, in a specified manner, and within a specified (reasonable) time;
- (b) seek an undertaking from the Code Subscriber in relation to the breach;
- (c) ask the Code Subscriber to take specified steps, within a specified time, to prevent the breach recurring; or
- (d) determine that no further action is required.

Where the CCMC determines that a Code Subscriber is required to take remedial or other action, this may be included in the determination that is issued to the complainant and the Code Subscriber under clause 6.4. Alternatively the CCMC may issue a subsequent written notice to the Code Subscriber, setting out what remedial or other action the Code Subscriber is required to take.

Following receipt of such a notice from the CCMC, the Code Subscriber will have an opportunity to make further submissions, for example, in relation to what might be a reasonable time frame for remedial or other steps to be implemented.

Unless the determination is that no further action is required, the CCMC will advise the Code Subscriber of the fact that if the Code Subscriber fails to take any steps requested by the CCMC, the CCMC may publicly name the Code Subscriber in the CCMC's annual report in connection with a breach of the Code.

4.7 Naming the Code Subscriber

The CCMC may determine to name the Code Subscriber in connection with a breach of the Code.

If the CCMC determines to name a Code Subscriber under this section, it must prepare a short notice that includes:

- (a) the name of the Code Subscriber;
- (b) the Code provisions that have been breached; and
- (c) the reason(s) that the Code Subscriber has been named.

The CCMC must notify the Australian Securities and Investments Commission that it intends to name a Code Subscriber and the reasons for naming that Code Subscriber.

This notice will be included in the next annual report of the CCMC. The notice may also be included on the CCMC's website for a period of not more than 12 months.

4.8 Allegations of criminal activity

Where a complainant makes allegations of criminal activity on the part of officers employed by, or acting on behalf of the Code Subscriber, the CCMC may determine that such allegations are more appropriately dealt with in another forum, such as a court.

The CCMC will still be able to investigate the complaint to the extent that it deals with an allegation of a breach of the Code. However the CCMC cannot make a determination on whether there has been criminal activity.

5. INQUIRIES

5.1 Grounds for Inquiry

The CCMC may conduct an Inquiry on its own motion solely for the purpose of monitoring one or more Code Subscribers' compliance with the Code.

5.2 Opportunity to make submissions

The CCMC must, before making any Determination give each Code Subscriber to which the Inquiry relates, and any other party which it reasonably believes may have an interest in the Inquiry, a reasonable opportunity to make submissions to the CCMC in relation to the Inquiry.

5.3 Notice of Determination

After the CCMC has given a Code Subscriber or any other relevant party a reasonable time within which to make further submissions, the CCMC may make a determination. This determination must:

- (a) be in writing;
- (b) briefly state the findings of the CCMC; and
- (c) briefly state the reasons for the findings the CCMC has made.

6. CONFIDENTIALITY

6.1 General principles

The CCMC will not disclose information relating to a complaint from which the complainant or a Code Subscriber might be identified except where:

- (a) the law or these procedures requires such disclosure;
- (b) the CCMC has determined to name a Code Subscriber, consistent with the CCMC's procedures;
- (c) the Code Subscriber has specifically authorised the CCMC to disclose information that might identify the Code Subscriber; or
- (d) the complainant has specifically authorised the CCMC to disclose information that might identify the complainant.

6.2 National Privacy Principles and CCMC Privacy Policy

The CCMC complies with the National Privacy Principles. The CCMC's commitment to privacy is explained in detail in the CCMC Privacy Policy, which is available from the CCMC's office and on the CCMC's website.