

15/11/2004

Dear Compliance Officer,

this is the first of the Code Compliance Monitoring Committee's electronic bulletins to subscribing banks, setting out the CCMC's approach to compliance issues that have arisen. Please feel free to forward this bulletin to all areas of the bank with an interest in these matters.

1. Following a review of the statistical returns for 2004, the CCMC has decided that future statistical returns will ask for dispute numbers rather than complaints. The CCMC defines disputes as "complaints by customers that are not resolved at the first point of contact, and are escalated to a complaints handling or customer relations area of the bank". This is slightly different to the BFSO's definition of disputes in light of the difference between the CCMC's compliance role and BFSO's dispute handling role.
2. A bank's obligation to respond to a complaint before the CCMC about a breach of the Code is not extinguished if the bank resolves the underlying dispute directly with its customer. The CCMC will continue to investigate whether the bank's conduct constitutes a breach of the Code, although the CCMC will take into account in its investigation any action taken by the bank to remedy an alleged breach, including settlement of the dispute. Banks should ensure that their response to any CCMC investigation focuses on the issue of Code compliance rather than dispute resolution.
3. In light of the information provided in the 2004 compliance statements and complaints received by the CCMC, the CCMC offers the following observations on how a bank may best ensure that it is compliant with the requirements of clause 25.2 of the Code:
 - a. The undertaking to try to help a customer overcome their financial difficulties is not necessarily limited to or by the general principle of section 66 of the UCCC. Therefore the obligation to "try to help" does not apply only to those customers where the bank has accepted a variation to the credit contract based on the hardship provisions of section 66. The CCMC acknowledges the commercial aspect of a bank's considerations in this area, and is not prescribing specific outcomes. But a bank needs to demonstrate that it has procedures/policies in place that reflect a genuine commitment to complying with this aspect of clause 25.2.
 - b. Of concern to the CCMC is the practice of banks not to inform customers of the hardship variation provisions of the UCCC, as required by clause 25.2. In several complaints to this office the bank has declined a hardship application, and on that basis determined that the UCCC provisions do not apply and therefore it does not notify the customer as required.

The hardship variation provisions of the UCCC are not limited to section 66, which relates to variation of a credit contract on the grounds of hardship. They include section 68, which explains a customer's right to apply to the Court if their hardship application is declined. It is precisely those customers who are unsuccessful under section 66 who need to be informed of their rights under section 68. The CCMC suggests that the best way to ensure compliance with the letter and spirit of clause 25.2 of the Code is to ensure that any customer who notifies the bank of their financial difficulties, or in respect of whom the bank is considering a variation, be informed of all hardship variation provisions of the UCCC prior to or at the time of a decision by the bank on their request.

c. The CCMC is of the view that under clauses 2.2 and 25.2 of the Code, it is not fair and reasonable for a bank to decline an application for hardship without giving the customer reasons. It could be difficult for a customer to fully exercise their rights under the hardship provisions of the UCCC unless they knew the reason/s for a bank's decision to decline their application. Therefore the CCMC suggests that a decision to decline an application for a hardship variation include written reasons for the decision.

If you have any queries or comments, please email me.

regards,

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