



Code Compliance Monitoring Committee

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Bank Forum 2007

The Australian Bankers Association held its annual Bank Forum on the Code of Banking Practice (the Code) on April 24, in Sydney. The Forum focussed on the theme of financial hardship. Approximately 20 representatives from subscribing banks across Australia participated in discussion prompted by case studies presented by Committee members Russell Rechner and David Tennant. The case studies were based on complaints received by the Committee and associated determinations relating to debt collection and financial hardship. The Committee discussed with bank representatives its approach to making determinations in these areas and general issues relevant to the Code.

The forum provided a useful exchange of information and a valuable opportunity for discussion on how the Code is working in practice. The Committee is considering holding another forum later in the year to gather bank views on the proposed review of the Code of Banking Practice.

Code obligations relating to financial difficulty

As outlined above, the Committee took the opportunity at the recent Bank Forum to advise banks of its approach to monitoring compliance with Clause 25.2 of the Code. Feedback from the Forum suggested that it would be useful for the Committee to set out aspects of that approach in this bulletin.

In formulating its approach to compliance with Clause 25.2, the Committee has had close regard to the views of the Banking and Financial Services Ombudsman (BFSO) as outlined in BFSO bulletins 46 and 53. The most recent of these bulletins, 53, details the two distinct obligations (or limbs) of Clause 25.2 (see below). These are:

Limb 1:

*“With **your** agreement, **we** will try to help **you** overcome **your** financial difficulties with any credit facility **you** have with **us**. **We** could, for example, work with **you** to develop a repayment plan.*

Limb 2:

*If, at the time, the hardship variation provisions of the Uniform Consumer Credit Code could apply to **your** circumstances, **we** will inform **you** about them”.*

The Committee has investigated a number of complaints in which it has determined that banks have breached Clause 25.2. In the Committee’s view, Clause 25.2 will apply if a bank has been put on notice of a customer’s financial difficulties. The Committee has found that it is not necessary for a customer to have explicitly stated that he/she is “in financial difficulty” for Clause 25.2 obligations to be triggered. Rather, the Committee looks to all the circumstances of the case and will find the bank on notice if the circumstances support it.

For example, the Committee notes from the complaints received that despite failing to meet their Clause 25.2 obligations, banks have often been quick to recommend that a customer apply for early release of their superannuation as a means to clear arrears. Severe financial hardship is required in order to obtain early access to superannuation funds. Banks should be assisting customers to overcome such difficulties and advising customers of their right to seek a variation to their contract on the grounds of hardship, in accordance with Clause 25.2, before making any suggestion regarding accessing superannuation funds. A suggestion that superannuation funds could be accessed is clearly insufficient to meet the obligations imposed by Clause 25.2.

The second limb of Clause 25.2 requires a bank to inform a customer of the hardship variation provisions of the Uniform Consumer Credit Code (UCCC), if they could apply to them. Failure to do so is the most common breach of Clause 25.2 seen by the Committee. It is good practice for a bank to be including a reference that the UCCC hardship variation provisions may apply to a customer’s circumstances early in the collections process, for example in initial correspondence. The Committee has recently determined however, that such a reference is insufficient to meet the obligations imposed by the second limb of Clause 25.2. Rather, if the Bank considers the contract to be covered by the UCCC, the Bank should make this clear to the customer and provide the customer with information about the provisions and how to seek a variation.

The attached flow chart sets out the action the Committee expects from banks in relation to the two limbs of Clause 25.2 and banks should consider this approach along with the guidance provided in BFSO Bulletins when considering bank policies and procedures relating to financial hardship and the management of individual hardship cases

Clause 14 Inquiry

In March, the Committee completed its inquiry into compliance with Clause 14 of the Code of Banking Practice, relating to account suitability. The results of the Inquiry were generally positive, with 10 out of 13 subscribing banks having some form of basic bank account seeking to meet the needs of low income or disadvantaged customers. Some banks displayed excellent practice. The results, particularly evident in the shadow shopping component of the inquiry, indicated that where account structures and fees were simple (and a number were not), staff and customers found it easier to understand and identify suitable accounts.

The Inquiry report, highlighting the best practice across the banks, is now available on the Committee's website at:

<http://www.bankcodecompliance.org/inquiries.html>

Stakeholder engagement

In addition to the Bank forum in Sydney, the Committee has been actively engaging with a range of stakeholders in the past month. Consumer and Small Business Representative, David Tennant, and Chief Executive, Kirsten Trott, addressed a group of financial counsellors and consumer advocates and met with the Western Australian Small Business Development Corporation in Perth last week. The consumer forum, organised by the WA Financial Counsellors Research Project, enabled participants to gain a better understanding of the Code and Committee procedures in order that suspected breaches of the Code may be referred to the Committee for review. The meeting with the Small Business Development Corporation was successful in furthering awareness of the Code's application to small business customers. The Perth visit also provided the opportunity for the Chief Executive to meet with local bankers to discuss Code issues.

A question regarding Bulletin 6 (February 2007) was raised at the consumer forum. The question related to banks asking for further financial information from consumers prior to responding to a request for a hardship variation. It may assist in clarifying the Committee's views to briefly summarise the position again:

- A reasonable request for financial information supports prudent and informed consideration of a hardship variation request and should be responded to;
- It is not inconsistent with the Code for a bank to request that a customer reporting hardship personally complete and sign a statement of financial position. A bank may reasonably refuse to accept a statement of financial position which a third party, such as a consumer advocate, has completed and signed on behalf of the customer.

- Where a bank requests a statement of financial position from a represented customer it should do so through their representative, recognising the important role consumer advocates can play in assisting the customer to understand and document their financial position, and
- If the customer's circumstances make it unreasonable to request that a personally completed and signed statement of financial position be provided, that should be communicated to the bank

Another consumer forum is planned for Darwin in June.

Compliance statements

Banks have been asked to submit their annual compliance statements to the Committee by the end of May. In these statements, the Committee requires banks to provide information about compliance across all sections of the Code and data on the number of complaints received and the number of complaints which resulted in a finding of a breach or breaches of the Code. This includes breaches which have been referred to the BFSO.

The annual compliance statement gives the Committee a useful snapshot of compliance across all banks and gives banks the opportunity to self report on areas in which they may not be fully Code compliant. The information provided in the compliance statements is used by the Committee to assist its other compliance monitoring activities.

Annual report

The Committee's annual report for 2006-07 will be available on the Committee's website www.bankcodecompliance.org by the end of May. Hard copies of the Annual Report are available on request.

Next Bulletin

The next bulletin is due to be released in August 2007.

Enquiries

If you have any enquiries about this bulletin or the work of the Committee more generally, contact Kirsten Trott on 03 9613 7353 or ktrott@bankcodecompliance.org



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**Banking Code of Practice
Clause 25. 2**

Awareness of financial difficulty

Customer does not have to state that they are in financial difficulty
Depends on the circumstances and bank knowledge of those circumstances
If circumstances are such to suggest customer access superannuation payments, indicates customer in financial difficulty.

Limb 1 – All Contracts

Obligation to assist customer to overcome difficulties

- applies to small business and all credit facilities
- is not limited to UCCC type variations
- long term solutions for long term problems
- short term solutions for short term problems

Provide Assistance
Bank must be proactive in providing assistance.
(Unlimited options eg. moratoriums or extended payment periods).

Be open and explain the assistance offered

Record arrangements reached and promises made and inform collections staff

Seek feedback from the customer on the process followed

Limb 2 - If UCCC contract (ie Section 80 notice served)

Advise customer that the Bank considers the contract is regulated by the UCCC

Explain hardship variation provisions and how to go about seeking a variation with the bank

Give genuine consideration to hardship variation

If hardship variation is rejected by the bank, give customer reasons for rejection and advise of right to apply for a variation in tribunal

