



Code Compliance Monitoring Committee
Code of Banking Practice
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Andrew McGowan
Inquiry Secretary
House of Representatives Standing Committee on
Economics, Finance and Public Administration
Parliament House, Canberra ACT 2600

By email to: Andrew.Mcgowan.reps@aph.gov.au

30 July 2007

Dear Mr McGowan,

Re: Inquiry into Home Lending Practices and Processes used to deal with people in Financial Difficulty

Thank you for inviting a representative from the Code Compliance Monitoring Committee ("the CCMC") to provide written comments to the Committee and to attend a roundtable on Friday 10 August 2007.

Please find attached the CCMC's Submission to the Inquiry into Home Lending Practices and Processes used to deal with people in Financial Difficulty.

I trust this information is of assistance to the Committee in its deliberations and look forward to the Roundtable discussion on 10 August 2007.

Yours sincerely

Kirsten Trott
Chief Executive Officer
Code Compliance Monitoring Committee

Enc: CCMC submission to the Inquiry into Home Lending Practices and Processes used to deal with people in Financial Difficulty with Attachments.



Code Compliance Monitoring Committee

Submission to the Inquiry into Home Lending Practices and Processes used to deal with people in Financial Difficulty.

Background

The Code of Banking Practice (“the Code”) is a voluntary industry code which forms part of the contract between a bank and its customer. The current Code was published in 2003 following a wide ranging review of the 1993 Banking Code and supersedes that Code. During this review, strong support emerged for the creation of an oversight body, which, in line with government recommendations on industry codes of conduct¹, could determine whether a bank had breached the Code and proactively monitor bank compliance in order to ensure banks are held accountable to this voluntary code of practice.

Hence, the Code Compliance Monitoring Committee (the “CCMC”) was set up under the Code to monitor subscribing banks’ compliance and investigate and determine complaints that the Code has been breached. In addition to investigating complaints, the CCMC requires banks to complete an annual statement of Code compliance, which includes a requirement to self report Code breaches. The CCMC also proactively monitors compliance by conducting themed inquiries into bank compliance with specific clauses of the Code. These inquiries often include exercises such as shadow shopping and compliance visits. The CCMC is empowered to publicly name any bank that persists in failing to meet its obligations under the Code.

The code monitoring function is distinct to that of the Banking and Financial Services Ombudsman Scheme (“BFSO”), which is focused on resolving customer disputes and which rarely makes a finding as to whether the Code has been breached.

¹ Department of Industry Science and Tourism, Consumer Affairs Division, “Codes of Conduct Policy Framework”, released by the Hon Warren Truss MP, Minister for Customs and Consumer Affairs in March 1998, pg 18.

In its decisions the CCMC is independent of any external influences although obviously it is bound by any relevant decisions of a court of competent jurisdiction. The CCMC does not entertain matters that are before any other competent decision making body at least until that process is completed.

Responses to Specific Questions

Other parties are better placed to comment on matters contained in questions 1, 2 & 4 of your letter. The comments in this submission will focus on question 3, whether borrowers in financial difficulty are being treated appropriately by lenders.

Are borrowers in financial difficulty being treated appropriately by lenders?

Although the CCMC's experience is limited to the bank lenders that subscribe to the Code (see Attachment A for a list of subscribing/non subscribing banks), the CCMC is of the view that the current provisions of the Code provide an appropriate benchmark for all lenders in regards to the treatment of customers in financial difficulty.

The combined effect of Code Clauses 25.1 (assessment of the ability to repay credit), 29 (ASIC & ACCC Debt Collection Guidelines), 14 (account suitability for low income earners) and Clause 25.2 (financial difficulty) requires subscribing banks to take a responsible and proactive approach to low income customers and those in financial difficulty. Specifically, Clause 25.2 of the Code requires banks to:

- assist customers (including small business customers) to overcome their financial difficulties, and
- inform customers about the hardship variation provisions of the Uniform Consumer Credit Code ("UCCC"), if they could apply to that customer.

This clause includes, but is not limited to, secured lending products. If complied with, the clause aims to ensure customers are aware of their rights under the UCCC but also to require banks to provide assistance over and above their UCCC obligations.

In the CCMC's view, the Code has, overall, worked well to encourage subscribing banks to develop and implement policies and procedures to improve their handling of customers in financial difficulty. The CCMC has deliberately interpreted bank obligations under Clause 25.2 in a manner which encourages continuous improvement of standards consistent with the banks' key commitments under the Code. The CCMC is developing "jurisprudence" and has provided guidance to assist banks in their compliance with Clause 25.2 (see Attachment B - CCMC May Bulletin and flow chart on interpreting Clause 25.2 of

the Code). To date, the CCMC has received a number of the complaints in relation to Clause 25.2, and in 2005, the CCMC conducted an Inquiry into bank compliance with this clause.

The CCMC has generally found that banks' policies and procedures evidence a strong commitment to assisting customers through financial difficulties. Some banks have been slow to incorporate adequate procedures and the CCMC is aware of instances where these policies and procedures have not been applied as intended. Specifically, the CCMC has received a number of complaints that customers have not been informed about the hardship variation provisions of the UCCC. Further, the CCMC has identified failures in updating communications, such as standard letters, and insufficient training of collections staff in this regard.

Key to the correct application of procedures relating to customers in financial difficulty is the ability of collections and other staff to appropriately identify those customers. The CCMC considers a bank to be on notice of financial difficulty where a reasonable view of the known circumstances indicates that to be the case. Customers do not need to use any specific terminology in order for Clause 25.2 to apply.

In the CCMC's view procedures should be sufficiently robust and flexible so that:

- rigid time frames do not unreasonably limit the assistance available to customers;
- short and long term solutions tailored to the customers circumstances, are explored through genuine dialogue with the customer in an effort to resolve the difficulties, and
- communications with consumer advocates and financial counsellors representing customers in difficulty are efficient and effective.

Of course customers and their representatives must understand the need to be reasonable and open in their dealings with their bank about their financial position and to advise banks early of any change in their circumstances.

The CCMC continues to work with banks to improve policies and procedures relating to customers in financial difficulty, and has agreed to review bank procedures where the BFSO has identified a systemic issue relevant to Clause 25.2, or indeed any other provision of the Code. Financial difficulty continues to be a central theme of forums with both consumer advocates and banks, however it is the CCMC's view that this does not represent a failing of the Code, but that the Code has appropriately set a high standard of conduct in relation to financial difficulty and that banks are continuing to progress towards meeting that standard.

As evidence of this progression, some subscribing banks have introduced a dedicated area to deal with customers in financial difficulty. If working

effectively, this provides customers in difficulty a central contact point with staff, knowledgeable of the bank's regulatory obligations, trained in dealing with customers in financial difficulty and authorised to make a payment arrangement with customers (i.e. hardship variations). Of those banks that have introduced such a dedicated area, staff, training and authorisation levels vary widely, and the CCMC, which will be monitoring the application of those policies, hopes and expects these will improve as best practice in this area is further developed.

The CCMC is aware of banks suggesting that customers seek early access to their superannuation as a means of relieving their financial difficulty. The CCMC has expressed its concerns about the long term implication of such a practice on the customer's financial position and has not accepted the argument that suggesting a customer seeks early access to their superannuation funds meets the banks obligations under Clause 25.2 of the Code.

2007 review of the Code of Banking Practice

The Code will be reviewed later this year. The CCMC has no reason to believe that the review will result in the Code requiring a lower standard of banks in relation to customer in financial difficulty.

July 2007

Attachments: A - List of Subscribing and non subscribing Banks to the Code of Banking Practice
 B - CCMC May 2007 Bulletin.
 C -CCMC Report into the 2005 Inquiry into Bank compliance with clause 25.2 of the Code
 D - CCMC Annual Report

Attachment A - Banks and the Code of Banking Practice

13 banks have adopted the Code of Banking Practice, including the 14 May 2004 amendments regarding guarantees.

Subscribing Banks	Non Subscribing Banks¹
Adelaide Bank	AMP Bank
ANZ	Arab Bank Australia
Bank of Queensland	Bank of China (Australia)
BankWest	Bank of Cyprus Australia
Bendigo Bank	HBOS Treasury Services plc
Citibank	BWA managed investments
Commonwealth Bank of Australia	Elders Rural Bank
HSBC	GE money
ING Bank	Laiki bank (Australia)
National Australia Bank	Macquarie Bank
St George Bank (includes its subsidiary Bank SA)	Mega International Commercial Bank
Suncorp-Metway	Members Equity Bank
Westpac	Mizuho Corporate Bank
	Primary Industry Bank of Australia
	Rabobank Australia
	Royal Bank of Canada
	State Bank of India
	Taiwan Business Bank
	The Bank of Tokyo-Mitsubishi UFJ
	The Royal Bank of Scotland Group
	United Overseas Bank

¹ Taken from the list of Bank Members from the Banking and Financial Services Ombudsman Website www.bfso.org.au

