



**CODE COMPLIANCE MONITORING COMMITTEE
(the CCMC)**

Guidance Note No. 7

**The Interrelationship between Compliance Investigations and Code Monitoring
Activities Undertaken by the CCMC**

The CCMC is an independent compliance monitoring body established under clause 36 of the Code of Banking Practice (the Code).

The CCMC oversees compliance with Code obligations by subscribing banks by:

- a. independently monitoring compliance with the Code
- b. investigating code breach allegations, and
- c. monitoring any aspects of the Code that are referred by the Australian Bankers Association (the ABA).

This Guidance Note is issued in accordance with clause 36(i) of the 2013 Code and clause 1.4 of the CCMC Mandate, which allow the CCMC to set operating procedures in dealing with the receipt and progress of complaints.

This guidance indicates the CCMC's likely approach when it considers the interrelationship between its code monitoring and compliance investigations powers and in particular the circumstances in which it might:

- (i) commence a compliance investigation as an outcome of the CCMC's compliance monitoring processes under clause 6.1(b) of the Mandate, and
- (ii) request information from a Code subscriber or the person that has made a relevant allegation under clause 5.1(b) of the Mandate.

All matters that come before the CCMC are considered on the basis of their individual circumstances, so this information operates as a guide only. Further, no Guidance Note can anticipate all issues that may need to be taken into account in a particular case.

Guidance Notes are subject to change by the CCMC and this document reflects the CCMC's views as at the date of its publication.

Any reference to "bank" in this Guidance Note means a bank which subscribes to the Code. Any reference to the "Code" means a reference to the revised 2013 version of the Code, unless otherwise stated. Any reference to a "consumer" or "customer" means an individual or small business that is either a customer or potential customer of a bank.

For more information about the CCMC, please visit its website: (www.ccmc.org.au).

The CCMC's Powers and Functions

1. The CCMC conducts a code compliance program that reflects the objectives of the Code and comprises three core activities, namely to:
 - 1.1 investigate allegations of code breaches
 - 1.2 monitor compliance with the Code, and
 - 1.3 monitor any aspects of the Code that are referred to the CCMC by the ABA.

The interrelationship Between Compliance Monitoring and Investigations

2. The CCMC's Mandate¹ sets out its powers and functions. These include how the CCMC will undertake a compliance investigation (clause 6) and conduct its compliance monitoring activities (clause 5).
3. Clause 6.1(a) of the Mandate states that the CCMC may commence a compliance investigation in response to an allegation from any person that a bank has breached the Code. The CCMC may also receive referrals from the Financial Ombudsman Service (FOS) and the ABA about alleged breaches of the Code.
4. A compliance investigation under clause 6 of the Mandate will usually therefore be conducted when the matter involves an individual bank and individual customer. It is usually associated with a retrospective look at bank conduct in circumstances where an alleged breach of the Code's obligations has been made.
5. The compliance monitoring powers within clause 5 of the Mandate provide the CCMC with the ability to engage more proactively with banks to monitor compliance with the Code, without the need for an allegation to have been made by any party that non-compliance has occurred.
6. This Guidance Note indicates the CCMC's likely approach when it considers the interrelationship between its code monitoring and compliance investigations powers, including the circumstances in which it might:
 - 6.1 commence a compliance investigation under clause 6.1(b) of the Mandate as an outcome of the CCMC's compliance monitoring processes, and
 - 6.2 request additional information from a bank or the person that has made a relevant allegation under clause 5.1(b) of the Mandate.

Undertaking Code Monitoring Activities

7. Clause 5 of the Mandate outlines a number of different methods that the CCMC may adopt for the purpose of monitoring compliance with the Code (See Guidance Note 1).
8. The CCMC can undertake different monitoring activities under clause 5.1 of the Mandate. These are to:
 - 8.1 issue one or more banks with a questionnaire to gather information about practices and procedures and undertake on-site testing procedures to verify that information (clause 5.1(a))
 - 8.2 request a bank or a complainant to provide information to, or to procure information for, the CCMC (clause 5.1(b))

¹ The CCMC's Mandate can be found at <http://www.ccmc.org.au/the-code/>

- 8.3 conduct market research to assess compliance with the Code by one or more bank, including through mystery shopping activities
 - 8.4 conduct Own Motion Inquiries for the purpose of monitoring one or more bank's compliance with the Code, such as by conducting a compliance visit at the premises of a bank, including interviewing representatives of the banks (clause 5.1(d)), and
 - 8.5 request each bank to lodge an Annual Compliance Statement (ACS) with the CCMC (clause 5.2).
9. The activities listed above are more likely to be conducted where the CCMC becomes alerted to a possible breach because:
- more than one customer is affected, or
 - there is an area of emerging risk, or
 - it suspects ongoing non-compliance.
10. Code monitoring activities may be conducted into one bank's compliance with its Code obligations or across all banks.
11. In deciding whether to undertake code monitoring activities under clause 5, the CCMC may take into account:
- the number of customers affected
 - other monitoring or investigations activity which indicate that there may be non-compliance with Code obligations by one or more banks, and
 - the potential adverse impact on consumers and/or small business customers of the conduct or non-compliance.
12. The CCMC may also decide to conduct an Own Motion Inquiry, under clause 5.1(d) of the Mandate if it identifies areas of emerging Code compliance risk with one bank, several banks or across the industry. These risks may be identified in a number of ways, such as in the assessment of trends and patterns arising from:
- responses to the Annual Compliance Statement program
 - instances of non-compliance self-reported by banks
 - the type and nature of breach allegations received for investigation
 - statistical data published by external dispute resolution schemes such as FOS and the Credit Ombudsman Service Limited
 - external factors, such as regulator or media focus
 - referrals received by the CCMC, and
 - other relevant information provided by external parties.
13. Further details of how the CCMC will undertake its monitoring obligations are provided in Guidance Note 1. For example, the CCMC may review the policies and procedures of responding banks to ensure capacity to comply with the obligations of the Code. In certain circumstances it may also test how these policies and procedures are applied in practice through mystery shopping or other market research.

When may the CCMC Commence a Compliance Investigation as an Outcome of its Monitoring Processes?

14. There are a number of links between the CCMC's compliance investigations and monitoring functions.

15. There are circumstances for example where the CCMC may commence an investigation into non-compliant activity under clause 6, if it has reason to suspect from its Code monitoring activities under clause 5, that a bank may have breached its obligations under the Code.
16. This power is linked to clause 1.2 of the Mandate and allows the CCMC to make a Determination that a Code Subscriber has breached the Code.
17. In these circumstances, the CCMC must consider clause 6.2 of the Mandate and not commence such an investigation if:
 - 18.1 the matter relates to a bank's commercial judgment in decisions about lending or security
 - 18.2 the CCMC is or becomes aware that the matter is being dealt with in another forum, such as a court of law (see Guidance Note 5)
 - 18.3 the matter is based on the same events and facts as a matter the CCMC has previously considered, unless there is new information
 - 18.4 the bank was not a Code subscriber at the time the events occurred, or
 - 18.5 more than one year has elapsed since the CCMC had reason to suspect that the bank may have breached the Code.
18. The CCMC may request that a bank extend the one year time limit under clause 6.2(a). The bank retains the discretion whether to agree to such a request. The CCMC encourages banks not to unreasonably withhold any such consent.
19. The CCMC may request further information or submissions from the bank in accordance with clause 5.1(b) of the Mandate, before deciding to commence a compliance investigation.
20. Where the CCMC decides a compliance investigation can and should be conducted, it will be undertaken in accordance with clauses 7 to 10 of the Mandate.
21. Where the CCMC considers that the actions, policies or procedures of a bank may be in breach of the Code, it will, in the first instance, discuss the issue with the bank concerned. The bank will be given reasonable opportunity to provide further information to the CCMC and comment on any proposed findings.
22. If the bank accepts that it has breached the Code, the CCMC will work with the bank to ensure that remedial action is taken to appropriately and effectively address this non-compliance and prevent re-occurrence.
23. The CCMC may decide to take no further action where it considers that there is no basis to determine a breach of the Code has occurred or where the bank has acknowledged that it has or may have breached the Code and has taken or proposes to take appropriate action to remedy any breach or to prevent a reoccurrence.
24. If a Determination is made that the bank has breached its Code obligations, then the CCMC will notify the bank of its reasons for decision in writing in accordance with clause 10.

When may the CCMC conduct Compliance Monitoring from an Investigation?

25. As a result of an investigation into an allegation that a bank has breached its obligations under the Code, under clause 6 of the Mandate the CCMC may identify that a broader assessment of the conduct, practices and procedures of one or all banks is required. It may also identify other issues outside the scope of the allegation, which indicate potential non-compliance with additional Code obligations.

26. In these circumstances, the CCMC may consider it appropriate to commence one or more of the Code monitoring activities outlined in clause 5 of the Mandate.
27. In deciding whether to commence monitoring activity, the CCMC may take into account any information in its possession, including the information received during the course of its compliance investigation.
28. Any monitoring activity undertaken by the CCMC in these circumstances may be conducted concurrently with a compliance investigation.

Referrals from the ABA and the FOS

29. The CCMC may receive referrals from the ABA (clause 6.1(c)) and FOS (clause 6.1(a)) that allege that a bank or banks have not complied with the obligations of the Code. Referrals from both organisations may result in the commencement of a compliance investigation.
30. The CCMC will consider matters referred by FOS or the ABA in accordance with the process outlined in clauses 6 to 10 of the Mandate.
31. Clause 5.1(b) specifically allows the CCMC to request a bank, the ABA or FOS to provide or procure further information for the CCMC in these circumstances.