



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

Guidance Note No. 9

Provision of Credit

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

The CCMC oversees the compliance of subscribing banks with their Code obligations 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 has two purposes:

- a. to indicate the CCMC's likely approach when it considers potential breaches of the "provision of credit" obligations under clause 27 of the Code, and
- b. to share the CCMC's view of good industry practice, which in some cases may extend beyond the strict requirements of the Code.

When considering whether a code subscriber has complied with the provisions of the Code, the CCMC will also have regard to the key commitments made by that bank to act fairly, reasonably and ethically in the provision of services to its customers and to comply with all relevant laws.

It is important to understand that the CCMC considers all matters on the basis of their individual circumstances and this document is not intended to anticipate all possible issues that might come before the CCMC.

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" is a reference to the 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).

Introduction

1. The purpose of this Guidance Note is to indicate the CCMC's likely approach when assessing compliance with the "provision of credit" obligations under clause 27 of the Code and to share our recent experience of good industry practice.
2. The Code sets out banks' obligations when offering, giving or increasing an existing credit facility. These obligations do not extend to banks' commercial judgments¹, but they are designed to ensure that banks engage in responsible lending and customers make informed decisions about credit.
3. The Code states:

*Before we [the bank] offer or give you [the customer] a credit facility (or increase an existing credit facility), we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay it.*²
4. In addition, banks have a Code obligation to promote better informed decisions about their banking services³, act fairly, reasonably and ethically in the provision of services and to comply with all relevant laws.⁴

Assessment of Code compliance

5. In its assessment of whether a bank has complied with its provision of credit obligations, the CCMC may consider, as appropriate:
 - 5.1 publications by the Financial Ombudsman Service (FOS) on 'maladministration in lending' and credit decisions⁵
 - 5.2 the 'National Consumer Credit Protection Act' 2009 (Cth) (NCCP) which includes the National Credit Code (NCC) as Schedule 1 to that Act⁶, and
 - 5.3 Regulatory Guideline 209 (Credit licensing: Responsible lending conduct)⁷ and Information Sheet 104 (Complying with your credit obligations)⁸ issued by the Australian Securities and Investments Commissions (ASIC).
6. The CCMC may also consider whether the bank, in accordance with clause 27 of the Code, has exercised the care and skill of a diligent and prudent banker in:
 - 6.1 selecting the credit assessment method it will apply to the credit facility or credit increase
 - 6.2 applying the selected credit assessment method to the customer, and
 - 6.3 forming its opinion on the customer's ability to repay the credit facility.

¹ For the 2004 Code see: <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice>
For the 2013 Code see: <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice/Code-of-Banking-Practice-2013---Online-Version#1e31>

² Code clause 25.1 (2004 Code) and Code clause 27 (2013 Code) – the obligation is identical in both Codes.

³ See clauses 2.1 and 3.1 of the 2004 and 2013 Codes respectively. 'Banking service' is defined in the Code.

⁴ See clauses 3.2 and 4 of the Code (2013 version)

⁵ Such as: The FOS Approach to Responsible Lending: <http://fos.org.au/publications/our-approach/the-fos-approach-to-responsible-lending/>

⁶ <http://www.asic.gov.au/asic/asic.nsf/byheadline/Consumer-Credit-Code>

⁷ [https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rq209-published-2-September-2013.pdf/\\$file/rq209-published-2-September-2013.pdf](https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rq209-published-2-September-2013.pdf/$file/rq209-published-2-September-2013.pdf)

⁸ [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Complying_with_your_credit_obligations.pdf/\\$file/Complying_with_your_credit_obligations.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Complying_with_your_credit_obligations.pdf/$file/Complying_with_your_credit_obligations.pdf)

7. A bank must demonstrate to the CCMC's satisfaction that all three steps have occurred before a credit facility or a credit limit increase is approved.
8. In applying these steps, a bank needs to have regard to the individual circumstances of the customer or potential customer. For the purposes of making this assessment, reasonable inquiries about the customer's circumstances, objectives and financial situation must be made. This includes any known vulnerability or disadvantage suffered by that person as well as the circumstances of the matter, its complexity and the level of credit involved.

Credit Assessments

9. The CCMC takes a case by case approach when assessing a bank's compliance with the Code. However, in all cases, banks are required to make reasonable inquiries to verify the customer's (or potential customer's) financial situation.
10. Some factors that may prompt a diligent and prudent banker to make additional inquiries, before applying the selected credit assessment method and forming an opinion about the customer or potential customer's ability to repay the credit facility may include:
 - 10.1 a history of consistently late or partial repayments and/or overdue notices
 - 10.2 a history of only making minimum (or close to minimum) repayments
 - 10.3 spending that regularly exceeds credit card limits
 - 10.4 spending patterns that increase debt levels to each newly increased credit limit with no material reduction in debt, and
 - 10.5 unusual transaction activity e.g. frequent cash withdrawals, deposits or repayment patterns in particular where these are inconsistent with income levels disclosed to the bank.

This list is not exhaustive.

11. In demonstrating compliance with clause 27 of the Code, the bank may also need to satisfy the CCMC that it assessed:
 - 11.1 data available from the bank's own records or data resources
 - 11.2 information from other accounts held by the customer with that bank
 - 11.3 the purpose and size of the facility, and
 - 11.4 the results of any credit, bankruptcy and insolvency checks.

Monitoring compliance with Code obligations

12. In determining compliance with the Code obligations, the CCMC will assess whether the bank's monitoring and assurance program allows it to effectively discharge its obligations in relation to the provision of credit. This program should include at a minimum:
 - 12.1 a robust policy and procedural framework
 - 12.2 effective communications and training for staff about responsible lending policies and procedures, and
 - 12.3 effective and timely internal dispute resolution processes.

Staff training

13. It is the CCMC's view that:
 - 13.1 where complaints and monitoring have identified knowledge and skills gaps in relation to provision of credit, additional and remedial training and insight should be offered to staff members, and
 - 13.2 an example of staff training may include staff awareness of the impact on customers of the bank not complying with the provision of credit Code obligations.