



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

Guidance Note No. 13

Financial difficulty

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 "financial difficulty" obligations under clause 28 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

What is financial difficulty?

1. Financial difficulty is not defined within the Code¹. In the absence of a specific definition, the CCMC believes the term 'financial difficulty' within clause 28 should be interpreted in a manner consistent with its ordinary meaning and its common use within the financial services sector.
2. The CCMC considers that financial difficulty means that a customer is willing but unable to meet their obligations under a credit facility. This may be due to a change in circumstances such as illness, unemployment, an increase in living expenses or other cause.
3. It may require assistance such as a variation to a customer's repayment obligations but is unlikely to include overlooked or late payments, in the absence of evidence that the consumer is unlikely to be able to pay.

This Guidance Note

4. This Guidance Note does not review each requirement under clause 28. Instead, its objective is to indicate the CCMC's likely approach when assessing banks' compliance with their financial difficulty obligations under the Code and to share the CCMC's experience in dealing with matters related to financial difficulty.
5. The CCMC recommends this Guidance Note is read together with:
 - 5.1. publications by the CCMC on banks' compliance with clause 28 which may include recommendations and examples of good industry practice², and
 - 5.2. the Financial Ombudsman Service (FOS) Australia's approach to the Code of Banking Practice and to disputes lodged by individuals and small businesses experiencing financial difficulty³.

The Code's obligations

6. Clause 28 of the 2013 version of the Code introduced new obligations for banks towards individual customers and small businesses⁴ who are or may be experiencing financial difficulties. These additional obligations enhanced the existing provisions under the 2004 version and relate to matters including:
 - 6.1. dealing with authorised financial counsellors or representatives
 - 6.2. the identification of customers who may be experiencing financial difficulty
 - 6.3. the availability of information regarding financial difficulty assistance, and
 - 6.4. staff training.
7. Under clause 28, banks have committed to try to help a customer, with a customer's agreement and co-operation, to overcome their financial difficulties with any credit facility they have with the bank. To read the obligations in full, please see the hyperlink set out in

¹ The Australian Bankers' Association (ABA) defines "financial hardship" in its industry guideline, '[Promoting understanding about banks' financial hardship programs](#)'.

² www.ccmc.org.au/2015/11/04/financial-difficulty-inquiry/

³ www.fos.org.au/publications/our-approach/the-fos-approach-to-financial-difficulty/

⁴ Small business is defined under the Code.

footnote five, below⁵.

8. In assessing compliance with the Code's financial difficulty obligations the CCMC may also consider:
 - 8.1. Banks' key commitments to act fairly and reasonably towards customers in a consistent and ethical manner under clause 3.2⁶.
 - 8.2. Banks' commitment to not assign a debt while considering an application for financial difficulty assistance (clause 32).
 - 8.3. Whether staff are trained to competently discharge their functions in relation to customers who are experiencing financial difficulty (clause 9).
 - 8.4. Banks' provision of internal and external dispute resolution services (clauses 37 to 39).

Legislation and other guidelines

9. In addition to these code obligations, the CCMC will have regard to relevant laws and regulatory guidance that also apply to the handling of financial difficulty matters, including:
 - 9.1. The National Credit Code⁷, which is a Schedule to the National Consumer Credit Protection Act 2009 (NCCP).
 - 9.2. The Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission's (ACCC) Debt Collection Guideline.⁸
 - 9.3. ASIC Regulatory Guide 165⁹ regarding internal and external dispute resolution.
 - 9.4. The ABA's industry guideline¹⁰, 'Promoting understanding about banks' financial hardship programs'.

The CCMC's approach

10. When determining compliance with the financial difficulty obligations within clause 28 of the Code, the CCMC will have regard to the following:

Genuine dialogue

- 10.1. The CCMC considers that banks should:
 - 10.1.1. engage in a genuine dialogue with customers giving due consideration to their individual circumstances
 - 10.1.2. have an effective framework to manage this dialogue between staff and the customer, and

⁵ www.ccmc.org.au/code-of-banking-practice-2/

⁶ Code clause 36(b)iii states that the CCMC's compliance monitoring functions and powers do not extend to clause 3 of the Code unless a breach of clause 3 is also a breach of another provision of the Code.

⁷ www.asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/

⁸ www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors

⁹ <http://download.asic.gov.au/media/3285121/rg165-published-2-july-2015.pdf>

¹⁰ www.bankers.asn.au/Media/Media-Releases/Media-release-2015/New-guidance-to-enhance-support-for-people-in-financial-hardship

- 10.1.3. be able to demonstrate this dialogue by recording all relevant details of conversations.

Case by case assessment of requests for assistance

- 10.2. Each request for assistance with a credit facility, including subsequent requests for assistance by the same customer, should be considered on a case by case basis. Banks should consider the individual circumstances of the customer and work with that customer to develop a repayment plan, where appropriate, having made a proper assessment of the customer's situation.
- 10.3. In addition, banks should ensure that any arrangements to assist a customer are appropriate to their individual circumstances. Where it is evident that a short term solution will not contribute to a customer overcoming their financial difficulties but that longer-term assistance may do so, this longer-term assistance should be given due consideration.
- 10.4. Banks' records should demonstrate that staff have requested relevant information about a customer's circumstances to assess the viability of assistance. These assessments should include a holistic review of the customer's obligations relating to their other accounts with the bank (where available).
- 10.5. However, banks should be flexible in their requirements for information to support a request for financial difficulty assistance, while having regard to any legal requirements. In particular, where they are aware a customer is experiencing illness, family violence, mental health issues, or where the request may impose significant costs on the customer (for example for small businesses).

Decisions

- 10.6. Where a bank has declined to provide assistance, the reasons for rejection should be clear and demonstrate to the customer that the bank considered all of their individual circumstances.
- 10.7. In determining whether a bank has met its obligations under clause 28.8 to provide confirmation of its decision in writing, the CCMC will take into account any regulatory requirements or industry guidance concerning the obligations of subscribing banks, particularly when granting short term repayment assistance to customers of less than 30 days duration.
- 10.8. When providing reasons for their decisions on whether or not to provide assistance, banks should ensure that a customer is given the opportunity to address the bank's concerns in accordance with their obligations under clauses 37 to 39 of the Code regarding dispute resolution.

Informing customers about the hardship provisions of the National Credit Code

- 10.9. Under clause 28.7 of the Code, banks must inform a customer about the financial difficulty (hardship) variation provisions of the National Credit Code where the bank thinks the provisions could apply to the customer's circumstances. Where there is uncertainty, the bank should take a liberal approach toward telling the customer about the provisions rather than not telling the customer.

Late payments

- 10.10. As noted in paragraph 3, an arrangement between a bank and a customer to remedy an overdue payment and/or waive a default fee may not of itself constitute assistance to overcome financial difficulty as required by the Code's financial difficulty clause, if the evidence suggests that the failure to pay was inadvertent and/or not linked to an inability to pay.

Good industry practice

11. The CCMC has identified good industry practice in the course of its code monitoring and compliance investigation functions which illustrates how the financial difficulty obligations can be effectively applied in practice. These principles may assist the banks to:

- 11.1. benchmark their current practice
- 11.2. enhance their ability to meet their commitments to promote better informed decisions about their banking services
- 11.3. enhance effective disclosure of information when discharging their financial difficulty obligations, and
- 11.4. comply with the key commitments obligation under the Code, including acting fairly, reasonably and ethically in the provision of banking services.

12. As such the CCMC believes the following is good practice for banks:

Identification of customers who may be experiencing financial difficulty

- 12.1. Applying a training program for frontline staff to identify common causes of financial difficulty from conversations with customers as early as possible.
- 12.2. Monitoring the effectiveness of all methods for identifying customers who may be in difficulty and improving processes where they are not successful.

Information for customers about financial difficulty

- 12.3. Providing prominent links to information about financial difficulty assistance on bank website home pages and the ability to find this information using obvious search terms.
- 12.4. The availability of information on websites about:
 - 12.4.1. the bank's specialised financial difficulty team and how to contact it
 - 12.4.2. the types of arrangements which may be available
 - 12.4.3. the types of documentation that a customer may need to provide to support an application
 - 12.4.4. a customer's rights under legislation and the Code, including relevant timeframes
 - 12.4.5. internal and external dispute resolution in the event that a customer is not satisfied with the financial difficulty assistance offered
 - 12.4.6. special relief packages on offer, such as emergency support for customers and communities following a natural disaster, and
 - 12.4.7. other sources of information, such as the Doing It Tough and Financial Counselling Australia websites.
- 12.5. The effective delivery of information regarding financial difficulty assistance via new technologies such as mobile phone applications. The CCMC is mindful of the

ever changing technology available to both banks and their customers. A customer who interacts with a bank primarily through such technologies should have equivalent access to financial difficulty information.

- 12.6. The availability of information about financial difficulty assistance via brochures, posters and any new technology throughout banks' branch networks.
- 12.7. Ensuring branch staff are able to provide at least basic information regarding financial difficulty assistance or know where to refer customers when enquiries are made, particularly where only one staff member is able to discuss such matters with a customer.

Consistent outcomes for both individual customers and those with representation

- 12.8. Providing effective and consistent outcomes to requests for financial difficulty assistance for both those made by consumers alone and those made with the assistance of a consumer advocate. This can partly be achieved by using simple language in correspondence and considering the communication needs of individual customers.

Monitoring compliance with Code obligations

13. In assessing compliance with the Code's obligations, the CCMC will consider a bank's monitoring and assurance program in relation to the Code's financial difficulty obligations. This program should include at a minimum:
 - 13.1. a robust policy and procedural framework
 - 13.2. effective communications and training for staff about financial difficulty policies and procedures, and
 - 13.3. an effective and timely internal dispute resolution process.
14. The CCMC considers that banks should monitor processes for the suspension of debt collection activities when considering applications for financial difficulty assistance. Processes which require manual input are of higher risk and effective monitoring will ensure that any omissions will be identified and rectified.
15. In addition, banks are encouraged to capture and analyse data regarding customers that request assistance more than once and complaints about financial difficulty assistance.

Staff training

16. It is the CCMC's view that:
 - 16.1. Where complaints and monitoring have identified knowledge and skills gaps in relation to the processing of requests for financial difficulty assistance, additional training should be provided to staff members.
 - 16.2. Banks should have specialised staff who are trained to deal with customers experiencing particularly sensitive circumstances, such as mental health issues and family violence. All staff should be trained to refer relevant cases to these staff members.