

Independent Review

Code Compliance Monitoring Committee

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February 2017

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1. INTRODUCTION

1.1. Nature of Review

The Code Compliance Monitoring Committee (CCMC) is responsible for monitoring the compliance of signatory banks with the Code of Banking Practice (the Code), a voluntary code that sets standards of good banking practice. The Code took effect on 1 November 1996. The Australian Payments System Council and Reserve Bank of Australia initially monitored the Code. The CCMC took over the monitoring role in 2004 and has performed this function since that time. It is configured as a 3 person committee (independent Chairperson, bank representative and a consumer and small business representative) supported by a small staff.

In July 2016, I was appointed by the Australian Bankers' Association (ABA) as Independent Reviewer of the Code. I was also separately appointed by the CCMC to undertake an Independent Review of the CCMC including whether it is "achieving its purpose of creating a better banking experience by monitoring compliance with the Code". The CCMC Review Terms of Reference are Attachment 1 to this Report.

It was expected that I would conduct the two reviews in tandem – for two reasons. The Terms of Reference for the two reviews overlap in that both require me to consider the adequacy of the role and powers of the CCMC as set out in clause 36 of the Code and the CCMC's Mandate which is an attachment to the Code. It was also more convenient for stakeholders to provide their input to both reviews in tandem. The submissions I received generally addressed both the Code (its content, gaps in coverage and style and language issues) and the CCMC's role in monitoring the Code. Similarly my meetings with community organisations, small business representative organisations, consumer representative organisations, banks, the ABA and other stakeholders canvassed both reviews.

1.2. Structure of Review Reports

I have prepared two reports: a report to the ABA that sets out my recommendations for change to the Code (Code Report) and this report to the CCMC.

The Code Report traverses in detail the role of the Code, the context surrounding my review and stakeholder criticisms of the Code. I explain the principles I have applied in reviewing the Code and my approach to the redesign of the Code. I have not repeated that introductory piece in this Report. Rather I refer to the Code Report for this.

Chapter 20 of the Code Report is a detailed discussion of the CCMC and the issues that arise from the CCMC's role as currently configured. It recommends a different and strengthened role for the CCMC focused on monitoring and public assurance, with changes to the Code and the CCMC's Mandate to make this possible. I have attached Chapter 20 to this Report (Attachment 2).



I was provided with a detailed Terms of Reference on commencement of this review in mid-2016. As is usual, the process of investigation and analysis drew the Review to focus more heavily on some aspects of the Terms of Reference than others. In particular, it became clear as the Review progressed that the emphasis should be on the forward-looking rather than a historical assessment of performance. I am satisfied that within the Report structure, all of the key aspects of the original Terms of Reference have been reviewed.

For consistency with the relevant parts of the Code Review, for clarity and for practicality, I have structured this Report by addressing separately each of the main functions of the CCMC and structured my comments around the sub-headings of:

1. Current practice
2. Observations
3. Future directions
4. Early gains

My recommendations – in both Chapter 20 of the Code Review and in this Report will fall in to three groups: those that must wait for a new Code to be implemented; those that can be progressed once there is in-principle direction from the signatory banks; and those that the CCMC are able to implement irrespective of any change to the Code. Without foreknowledge of the industry response, I have not attempted to separately identified these, however would encourage the CCMC to be active in adopting recommendations as early as is practical.



2. EXECUTIVE SUMMARY

I have been asked by the CCMC to provide an independent review of the effectiveness of their Code compliance monitoring operations. This review is triggered by my parallel independent review of the Code – which comes at a time of significant community pressure on the banking industry.

1. I found that industry were largely satisfied with the performance of the CCMC. Code signatories identified value from the CCMC's work – more value from work aimed at good practice and less from work that was focused on breaches.
2. I found significant dissatisfaction amongst non-industry stakeholders with the overall effectiveness of the CCMC, however this was not a reflection of the performance of the CCMC, but a criticism of the framework (the Code, its Mandate and its resourcing) within which it operates.
3. Although some urged the CCMC towards more of a quasi-regulatory role, I concluded that it should be focused on public assurance through more visible, transparent monitoring – and adding value to the industry through a greater focus on good practice and continuous improvement.
4. I set out my view of these strategic and role issues in a detailed section (Chapter 20. of the Code Report and reproduced here at Attachment 2) which sets out 19 Recommendations aimed at future role and approach.
5. I also reviewed each of the main functions of the CCMC for the effectiveness of its current practices (within the current constrained framework) and found that its monitoring activities, investigations, public reporting and stakeholder engagement are being delivered professionally and to a good standard.
6. Nonetheless, it is clear that this effort is not meeting stakeholder expectations. I expect that the recommendations I have made in the Code Report, if adopted, will significantly shift stakeholder perceptions, however this may take some time.
7. While some recommendations in the Code Review and this Review may need to await a new Code, some can be taken up immediately and for others, the CCMC will have sufficient guidance from the banking industry's initial response to the Code Review to begin to move in the proposed directions in the short-to-medium term. I see this movement as essential to community confidence in implementation of a new Code.
8. I have made 6 recommendations in this Report focused mainly on initiatives that the CCMC could take up ahead of a settled new Code and Mandate.

As with my approach to the Code Review, I have chosen not to take a narrow technical approach, rather I have looked to the higher level objective of how the Code can deliver improved trust. I see a more visible, more analytical, more innovative, more collaborative CCMC as a critical part of delivering on that objective.



3. MEETING STAKEHOLDER EXPECTATIONS

Whilst I do not want to extensively repeat the Code Report in this Report, some summary of stakeholder views is useful to establish the expectations that the CCMC has to strive to meet.

Signatory banks acknowledged that they gain insights about best practice from the CCMC and they clearly value this. There were, however, some criticisms that the CCMC at times demonstrated a lack of deep expertise in some aspects of banking. There was also some concern about a lack of clarity as to the CCMC's role vis a viz the Australian Securities and Investments Commission (ASIC) and the Financial Ombudsman Service (FOS).

Many non-industry stakeholders knew little about the CCMC. Those with a reasonable level of knowledge described the CCMC's configuration as 'limited'. Comments were made about its very low profile, that it is not 'holding banks to account', that its powers are inadequate, that its sources of information about problem issues within the industry are inadequate and that data limitations reduce the value of its public reporting. They want to see a stronger monitoring function – and to a considerable extent the push for the Code to be submitted to ASIC for approval under the Corporations Act 2001 is clearly motivated by a view that stronger monitoring would be an outcome of that process.

While I understand some stakeholders' frustration, I think that in casting about for a point of comparison, some stakeholders have contrasted the CCMC with government regulators (such as ASIC or the Australian Competition and Consumer Commission). I see this as a misconception of what can be reasonably expected of the monitoring body of a voluntary Code.

I was not persuaded that simply calling for a 'tougher CCMC' and adding sanction powers would make a long-term difference to the CCMC's effectiveness nor the community's confidence in the Code. I am afraid that I may disappoint some, but in my review of the Code, I have recommended a substantial re-focusing of the role of the CCMC – to something that is a more natural 'fit' and that it is actually capable of doing well.

To the extent that stakeholder criticisms were made of the CCMC, my clear conclusion in the Code Report is that these are less about the CCMC's performance and much more about the ways in which the Code, the CCMC's Mandate and the CCMC's resourcing have limited its ability to deliver a monitoring function that meets community expectation. I propose changes to these that would result in:

- A broader reach to the Code with new obligations such as in relation to credit card lending and cross-selling, additional protections for customers in financial difficulty and those with special needs and strengthened small business protections. The CCMC's monitoring role would expand accordingly.
- The amendment of the CCMC Mandate to de-emphasize the CCMC's responsibilities for investigating individual allegations of breaches and to make it clear that the most important dimension of the CCMC's work is monitoring, undertaken with a risk-based, systemic focus and an emphasis on improving banking practice.



- A more explicit role to provide the public with monitoring information and assurance about the banks' compliance with the Code, and with more depth of analysis in its public reporting.
- Amongst other things, I recommend Code and Mandate changes to provide the CCMC with a broader set of powers it can apply to address non-compliance.

Like the Code Report, this Report is focused on how best to meet stakeholder expectations and achieve credibility for the CCMC as an effective monitor. I provide my recommendations as to the steps the CCMC can take in advance of any change to the Code and Mandate to begin the process of strengthening the monitoring function.



4. MONITORING ACTIVITIES

Clause 1.2(b) of the CCMC's Mandate specifies the CCMC's function "to monitor Code Subscribers' compliance with the Code, which includes conducting its own motion inquiries (OMIs) into one or more Code Subscribers' compliance with the Code".

Clause 5.1 sets out the methods that the CCMC may use for the purpose of monitoring compliance. These include issuing questionnaires to signatory banks about practices and procedures, requesting signatory banks to provide information, conducting market research to assess compliance including through mystery shopping activities, conducting OMIs including via compliance visits and requesting signatory banks to lodge an annual compliance statement (ACS). The CCMC has in fact used all of these tools.

The CCMC reports the results of its monitoring to signatory banks privately showing each bank how they compare with the rest of industry. The CCMC also reports publicly on an anonymised basis through own motion reports and its Annual Reports. A Guidance Note is another possible outcome of the CCMC's work. For example, Guidance Note No. 13 Financial difficulty was issued in March 2016 to entrench the recommendations in the CCMC's inquiry report of November 2015.

As discussed in the Code Report, I think that the CCMC's monitoring role is a critical element of the Code. In my view, unless there is confidence in the monitoring, no amount of change to the Code will win back for signatory banks the trust of the community.

In my view, the CCMC's monitoring work has been undertaken in a professional and independent manner and has played a constructive role in encouraging good practice. To mention just a few examples:

- The CCMC has been cognisant of the issues surrounding direct debit cancellations and has kept this issue on signatory banks' radar by reporting back to them about repeat shadow shopping exercises¹. The CCMC was also successful in its discussions with signatory banks about the fairness of charging a direct debit cancellation fee².
- Through its ACS program and its Financial Difficulty OMI, the CCMC has obtained and publicly disseminated trend data about the percentage of financial difficulty requests that are granted³ and made recommendations that have contributed to the progress made by industry on this issue.
- Most recently, the CCMC has raised the issue that some signatory banks are not well placed to identify those of their business customers that are small businesses

¹ CCMC Direct Debits Inquiry Follow Up Report, May 2012

² CCMC 2014-15 Annual Report p.13

³ Mostly recently CCMC 2015-16 Annual Report p.14



for the purposes of the Code – creating the risk that some small business customers may not be receiving the benefit of Code protections to which they are entitled⁴.

Yet the CCMC’s monitoring activity has clearly not been enough to win the confidence of external stakeholders.

As I discuss in the Code Report, the CCMC is seen by stakeholders to fall short in some respects, however my view is that much of this is due to limitations of the current Code and Mandate. My Code Report recommendations aim to address those problems in a structural, long-term way. Whilst those framework changes are important, it seems to me that the CCMC is able within the current settings to take steps to improve confidence in its monitoring.

To simplify, it seems to me that there are three dimensions to the community having confidence in effective monitoring of the Code.

1. The extent of monitoring activity must be evident (banks are reporting, customers and other sources of information are informing, a monitoring body is active in its checking on compliance);
2. The credibility (reputation, capability, capacity) of the monitoring body must be evident (its people are widely respected, they have access to needed skills and enough resources); and
3. The results of the monitoring must be evident (the community sees how banks are complying – good and bad).

These three dimensions provide a guide for steps that the CCMC can take to move towards higher community confidence in its role – within its current environment and in moving towards its new framework.

4.1. Information base

4.1.1. Current practice

In other sections of this report I have discussed specific aspects of the ways in which the CCMC builds its information base about Code compliance issues. These include through the Annual Compliance Statement, inquiries made in the course of individual investigations and OMLs and publicly available regulatory reports and research. Some OMLs result in a follow-up inquiry in which progress is tracked over time. To a small extent, referrals come from FOS. The Code and Mandate allow for an ABA referral although this has never happened.

⁴ CCMC Provision of Credit Inquiry Report, January 2017, p.17



4.1.2. Observations

In the Code Report, I have not criticised how the CCMC staff build the information base for their monitoring activity. I think it is being done to the best of the organisation's ability within a range of constraints.

4.1.3. Future directions

My review of the Code does however, give some emphasis to strengthening this capacity in the future. To better target its monitoring and so enhance its effectiveness, I think that the CCMC needs to have broader and deeper sources of information about Code obligation-related signatory bank practices that are divergent or that are failing to satisfy customers.

I recommend that the CCMC enter into arrangements with signatory banks' external dispute resolution schemes (EDR) – currently FOS – to obtain information about banking systemic issues, with banks' internal dispute resolution teams to obtain their complaints trend analysis, with Customer Advocates to understand the issues that they are pursuing and with consumer and small business representatives to understand their concerns. It is also important that the CCMC keep abreast of ASIC, Government and Parliamentary reports that deal with matters addressed in the Code and seek extra information from officials as needed.

To give some examples of the kinds of issues that a broader information base can highlight (issues that I became aware of as a result of my consultations with stakeholders):

- Some stakeholders have expressed concern that at least some signatory banks are not confirming in writing an 'indulgence' – essentially a decision to provide short term financial difficulty assistance – yet Code clause 28.8 requires written advice of all decisions to grant financial difficulty assistance (in which case the main details of the arrangement must be specified) and all decisions to refuse financial difficulty assistance. (This issue was not raised by stakeholders as an issue of concern at the time of the CCMC's Financial Difficulty Own Motion Inquiry Report, November 2015.)
- There appear to be inconsistent practices in relation to the Code clause 27 diligent and prudent banker assessment of ability to repay a credit card credit facility – whether this assessment is undertaken by reference to the minimum amount payable under the card or repayment of the credit limit⁵. (This was not referred to in the CCMC's Own Motion Inquiry Provision of Credit Report, January 2017 – although other serviceability issues were addressed.)
- Concerns have been expressed about the clarity and accessibility of small business loan contracts⁶ – yet Code clause 12.2 requires terms and conditions to be

⁵ Australian Government, the Treasury, *Credit cards: improving consumer outcomes and enhancing competition*, May 2016, p.12

⁶ Parliamentary Joint Committee *Impairment of Customer Loans Report*, May 2016, Rec 4, Australian Small Business and Family Enterprise Ombudsman, *Small Business Loans Inquiry Report*, 12 December 2016, p.27



consistent with the Code and clause 3.1(d) requires signatory bank information to be in plain language.

4.1.4. Early gains

Whilst I recommend in the Code Report that the CCMC's Mandate is amended to explicitly empower the CCMC to proactively gather information from a wide range of sources, the CCMC should be able to progress along this path without waiting for Code and Mandate changes.

(I recommend in the Code Report that the CCMC's Mandate is amended to require signatory banks to report breach information to the CCMC quarterly. But this is probably not something that the CCMC can require of signatory banks without change to its Mandate.)

Once an in-principle position on a new Code is reached by the banking industry, it is open to the CCMC to build links into the small business sector in the context of a revised Code, to strengthen its relationships with potential sources of intelligence, to develop its protocols with EDR schemes for exchange of information and to systematise its gathering and recording of intelligence.

Recommendation A

The CCMC should broaden and deepen its sources of information about the effectiveness of and compliance with the Code including by obtaining regular reports from signatory banks' internal dispute resolution managers and Customer Advocates, by establishing arrangements with external dispute resolution schemes to be notified of systemic banking issues and by reaching out to customer advocacy organisations, small business representative organisations and regulators.

4.2. Annual Compliance Statements

4.2.1. Current practice

At the end of each financial year, the CCMC requires each signatory bank to complete an ACS. Whilst the questions change somewhat from year to year, typically the ACS requires the banks to provide information about:

- Material changes to their risk and compliance framework;
- Code breach reporting including the number of breaches for each Code obligation;
- Customer complaints;
- Financial difficulty requests and assistance granted;
- Monitoring to ensure compliance with the Code; and



- Details of initiatives taken to improve compliance with the Code

Recent ACSs have also asked questions directed to the Code obligation to provide documents on request and the diligent and prudent banker/ provision of credit obligation.

In framing questions, the CCMC takes into account a risk based assessment of information received over the preceding year. It may ask questions to ascertain whether signatory banks have responded to CCMC recommendations in OMI reports. It also gathers information to help it prepare for and shape planned OMIs

The CCMC meets with each signatory bank individually after analysing each banks' ACS. The CCMC benchmarks each bank against other signatory banks on an anonymised basis and provides written and oral comments to the bank about its performance as disclosed in the ACS. The results from the ACS program are publicly reported via the CCMC's Annual Report.

4.2.2. Observations

The feedback from signatory banks is that the CCMC's individualised reporting of ACS data is insightful and helps identify areas where the bank is not performing as well as its peers. This, they said, serves to motivate continuous improvement. They have, however, commented that sometimes ACS questions require the collection of data that is difficult to produce without advance notice (prior to the start of the relevant financial year) so that they can put in place arrangements to collect the requested data.

The ACS is a key strategic information tool for the CCMC and while it is important not to aggravate relationships with the banks with information requests, there needs to be more creative use of this in my view. I have observed that some of the information reported by the CCMC is quite useful and some does not cast a great deal of light on bank practices.

4.2.3. Future directions

A broadened Code will necessarily put greater load on the banks to collect a wider set of information and I think the revamped CCMC will also need to be a little more demanding in their requests of the ACS over time.

I have also envisaged the CCMC as something of a 'data translator' – helping to make the banking industry more transparent to stakeholders and the data more useful. I expect that this will impose further burden on banks in the short to mid-term, but after set-up is likely to reduce information-provision overheads where the CCMC is able to use 'raw' data from bank systems without bank staff having to provide manual interpretation and 'data scrubbing'.

I also envisage that the longer-term information planning I recommend should assist with easing the reporting burden on the banks.

4.2.4. Early gains

Opportunities for the CCMC to begin to move in its new directions could include:



1. develop a more robust long term information plan that sets out the steps to the CCMC's new information-gathering scope;
2. arranging consultative discussions with key bank staff responsible for ACS reporting – to enable them to provide advice and for them to prepare their own thinking;
3. review of past Annual Reports to identify what information or analysis would strengthen future reporting.

In my later discussion of the CCMC's public reporting, I also say more about the collection and analysis of bank data.

4.3. Own motion inquiries

4.3.1. Current practice

During the last 5 years, the CCMC's OMI's have canvassed the provision of unsecured credit, financial difficulty, chargebacks, guarantees and foreign currency loans. Typically, there has been one new inquiry per year. Sometimes there is also a follow up inquiry to assess whether practices have improved since a previous CCMC inquiry.

The CCMC uses its information base (see earlier discussion) to choose an issue for inquiry with particular focus placed on ACS information including breach data, complaints to the CCMC and issues of interest to stakeholders. The aim is to inquire into signatory bank procedures and processes to achieve compliance with a Code obligation that has a significant impact on Code customers.

Typically the CCMC OMI process includes collecting data from the banks, seeking explanations as to their processes and reviewing relevant procedural documents. An OMI can involve a range of techniques, including shadow-shopping, statistical analysis, questionnaires and so forth.

The CCMC also typically seeks information from other stakeholders such as ASIC, consumer organisations and signatory banks' external dispute resolution scheme, currently FOS.

4.3.2. Observations

I support the CCMC's use of a flexible approach to each OMI, with the best tools and techniques for the job chosen for each inquiry..

OMI reports are generally well received by signatory banks. The banks consider that these reports have most impact where they are clearly framed as initiatives to identify and share best practice, rather than having a breach focus.

Difficult issues can arise where the CCMC enquires into a Code obligation that overlaps with legislative obligations - some signatory banks felt that this can result in the CCMC assuming a role that is more properly for ASIC. My view of this is that the Code provisions are already



woven into the 'tapestry' of obligations that arise from other sources. Overlap issues are inevitable, however 'neat' demarcation ought not be the key driver of whether an OMI should or shouldn't be conducted. Clearly, if there is a current ASIC investigation that overlaps, every effort should be made to avoid double-handling of information requests, however ASIC investigations do serve a different purpose. The driver should be – would the community expect that the Code monitor would be looking at this issue?

Non-industry stakeholders felt that OMI reports are insufficiently visible (they are available on CCMC's website, but typically are not reported in the press). I agree. Although I understand that the CCMC has tended to prefer a low-key approach, some stakeholders see this as trying to avoid public scrutiny and criticism of signatory banks.

4.3.3. Future directions

Under the recommended proposed new role for the CCMC, I would see the OMI process substantially strengthening. I expect that the recommended greater focus on systemic issues, rather than individual customer matters, will permit more OMIs. Additional sources of information and data analysis expertise are aimed at enabling more deeply searching, analytical OMIs. It would also not be controversial for the results of OMIs or follow up Inquiries to be put to the media. It would be entirely consistent with assuring the community that the Code is being monitored, that banks are being held to account and that the CCMC inquiries offer insightful analysis of practices in the sector.

4.3.4. Early gains

Clearly, for CCMC to gear up to the vision described will take some time, however, once the banking industry has decided what it will commit to, there is an opportunity for the CCMC to begin to take some sensible steps towards that vision. Apart from moving to the longer-term business plan, these steps could include accessing contract data analysis skills, some initial recruitment of specialist skills, beginning to establish the networks of contacts for information sharing and so forth.

It would also be important to make a small, visible increase in the OMI activity that would serve to demonstrate the banking industry's commitment to this new framework. The first step would be to return to at least one new OMI and one follow up OMI per year (as occurred in 2012 and 2013)

4.4. Developing a longer term monitoring program

If the CCMC has broader and deeper information sources, it should be in a stronger position to take a longer term, more rigorously risk-based approach to planning its monitoring activity.

I have mentioned earlier the difficulties posed for banks when the CCMC does not provide advance notice of information that they need to collect in order to respond to the CCMC's requests for information – whether this is in the ACS or as part of an OMI. Longer term planning should aim to provide that advance notice to banks. A two to three year rolling



information plan would be an appropriate mechanism and this should explain the risk assessment process used to arrive at priorities including relevant sources of referrals. Of course, this should be kept under review and revised as appropriate.

The monitoring program should continue to incorporate focused follow up inquiries to check to see whether recommendations in earlier inquiries have been adopted and practices have changed. This is important for external credibility, particularly given stakeholder scepticism about whether industry are implementing the CCMC's recommendations.

To the extent that the new Code adopts my recommendations, I would expect that the CCMC's resourcing would need to increase progressively as new Code provisions become part of its Mandate and more OMIs are required to provide assurance about compliance with an expanded set of obligations.

Recommendation B

The CCMC should revisit its 3 year plan and set out a pathway towards its new role, including progressively strengthening resourcing, a risk-based plan for increasing the number of own-motion inquiries conducted in a year, and providing signatory banks with advance advice of information needs.

4.5. Publicising the CCMC's monitoring work

I have mentioned earlier stakeholder feedback that the CCMC is insufficiently visible. In the Code Report, I recommend that the CCMC should use its engagement with customer representative, industry and lobby organisations to promote awareness of its work. This promotion activity should include the CCMC's OMI reports. Until very recently, these have been provided to industry and the stakeholder groups with which the CCMC's most commonly engages – but not generally to the media. OMIs need to be promoted more actively in order to make visible that the Code is being monitored and that signatory banks are being held to their promises.

Recommendation C

The CCMC should actively promote its own motion inquiry reports to interested stakeholder groups including the Australian Small Business and Family Enterprise Ombudsman, consumer advocacy groups, financial counsellor networks, Legal Aid organisations, community legal centres, consumer affairs departments and other government regulators. A media release should be issued about the results of each own motion inquiry report to encourage media to report the CCMC's work and develop public profile for its work in 'holding banks to account'.



5. INVESTIGATIONS

Clause 1.2(a) of the CCMC's Mandate specifies the CCMC's function "to investigate and make a Determination on any allegation from any person that a Code Subscriber has breached the Code". The Mandate details how a CCMC investigation may commence, what is outside power, what the CCMC must take into account, what the CCMC may require of signatory banks and so on.

5.1.1. Current practice

In 2015-16, the CCMC finalised 41 cases of breaches of the Code.

Figure 1: CCMC cases closed 2015-16

Outcome	Number
Breach	1
No breach	6
Withdrawn by reporting customer/ no further contact from customer	12
Self-reported breach by bank	11
Decision already made by another forum	2
CCMC discretion to close because other forum more appropriate than CCMC	2
Outside CCMC's jurisdiction (more than 12 months old)	7

Source: CCMC 2015-16 Annual Report p.26

To promote efficiencies, the Chairperson has a delegation to resolve some matters outside meetings of the full CCMC. However, that delegation does not permit him to make a determination (a formal decision that is the end point of a very small number of investigations) or decide to name (by way of shaming) a signatory bank – these are matters reserved for the full Committee.

5.1.2. Observations

My review suggested that the CCMC is diligently carrying out investigations in a fair and timely manner (within the constraints of sometimes waiting for FOS to finish its work before the CCMC can consider Code ramifications).

5.1.3. Future directions

In the Code Report, I set out my view that many CCMC investigations of individual matters add little value and so are not a good use of the CCMC's resources. A CCMC investigation almost invariably disappoints the customer who brings the matter to the CCMC. The CCMC is not a forum for obtaining compensation, contrary to the frequent expectation of the customer. Nor



is the CCMC able to 'punish' the bank if a breach is found – again contrary to the frequent expectation of the customer. Once the customer understands this, the customer is quite likely to lose interest in the matter – as the high rate of discontinued matters shown in Figure 1 bears out.

Although in theory, investigations of individual matters could lead to the CCMC recommending that the signatory bank make significant process improvements, this is rare. Isolated incidents are very often a one-off human error – and without a systematic investigation of other similar matters, neither the bank nor CCMC may be able to identify if they are more than a one-off.

In the Code Report, I affirm however, the value of the CCMC receiving reports of individual breach allegations. My view is that these should be used primarily as a source of intelligence as to possible Code compliance 'hot-spots' and should be an important factor in the targeting of the CCMC's monitoring program. Where the CCMC's information suggests that an issue brought to the CCMC might be representative of a systemic problem, I think it would be entirely appropriate for the CCMC to investigate the matter, more as a way of obtaining a deeper understanding of the bank processes under scrutiny. In the Code Report, I recommend that the CCMC's Mandate should use language that makes it clear that the CCMC uses reports of suspected breach to inform its risk assessments and will only investigate selected individual matters.

5.1.4. Early gains

Again it seems to me that the CCMC is able to take steps along this path without waiting for Code and Mandate changes. The CCMC has been working with banks and other organisations to eliminate language in consumer information that would lead to unrealistic expectations. This can be given greater emphasis.

Clause 6.3 of the CCMC's Mandate provides that the CCMC may "decide at any stage prior to the making of a Determination that it is not appropriate to investigate or continue to investigate a matter commenced under clause 6.1". The clause gives the CCMC a broad power to take into account anything that it considers reasonable and appropriate when making this decision including the nature of the allegations, including the significance of the issues raised, and whether they are frivolous or vexatious, how aged the matter is, whether another forum would be more appropriate and previous work undertaken by the CCMC to monitor or review the signatory bank's practices.

I think that the CCMC should move to use this discretion much more actively. It would, for example, be possible under the current Mandate for the CCMC to immediately refer an allegation of a breach to the relevant signatory bank and ask for a response and complaints information about like matters. Unless the bank's response, together with other information held by the CCMC, suggests a possible systemic issue, the CCMC could advise the person making the allegation that the matter is not being investigated at this stage, but the issue is on the CCMC's "radar" and will be taken into account in the CCMC's monitoring program and/or may be re-opened if further information suggests a systemic issue may exist.



I appreciate that the CCMC could not abruptly take this path without some considerable preparatory work. It would be important for the CCMC to explain to stakeholders this proposed approach and the reasons. For example, consumer representative stakeholders may only accept this, if they are able to see tangible evidence of re-direction of resources to create a more vigorous monitoring program (see my earlier discussion of this).

It may also be appropriate to discuss this approach with ASIC (noting of course, that this is similar to the approach that ASIC takes to breach allegations that it receives). The CCMC would need to amend Guidance Note No. 2 CCMC Compliance investigations – Discretion (Mandate clause 6.3), issued August 2013. The CCMC's website would also need to convey this message so that those who report matters in the future are not taken by surprise. Presentations and publications would need to use terminology consistent with this approach.

Recommendation D

The CCMC should use the discretion conferred on it by Mandate clause 6.3 to decide not to investigate a report alleging a Code breach unless this is an issue that the CCMC considers is relevant to its monitoring program. Instead the CCMC should use reports alleging a Code breach as one of many sources of information about potential Code compliance risk areas for signatory banks. Recognising that this would be a considerable change of approach, the CCMC would need to explain this new approach to stakeholders and undertake other preparatory work.



6. PUBLIC REPORTING

The CCMC is required by clause 12 of its Mandate to prepare and publish an Annual Report that includes information about its monitoring activity, signatory banks' ACS information and CCMC investigations. As discussed in the Code Report, I see the CCMC's public reporting as vitally important in providing transparency as to the CCMC's work in the interests of providing assurance and building confidence in the Code's promises to the community.

Consistent with clause 12, the CCMC's 2015-16 Annual Report includes information about:

- The CCMC's ACS program for that year
- The CCMC's Financial Difficulty OMI (report issued November 2015) and Provision of Credit Inquiry (report issued after the release of the Annual Report)
- Investigations including volumes, outcomes
- Case studies to illustrate the issues that the CCMC sees
- Engagement with stakeholders
- Committee members and staff

In this section, I focus particularly on the CCMC's Annual Reports as the vehicle for making public the information obtained by the CCMC through the ACS program and the action taken by the CCMC in response to that information.

6.1. Focus on breaches

As is usual, the CCMC's 2015-16 Annual Report discussion of the ACS program dwells in particular on the data collected from signatory banks about Code breaches (about half of the pages devoted to the ACS program). Other matters covered include continuous improvement initiatives, financial difficulty, customer complaints and information about compliance with new obligations related to customers in remote indigenous communities.

In the Code Report, I express my view that the CCMC should evolve away from being a 'quasi-regulator' towards being more of a mechanism for community assurance through active monitoring and promoting higher standards. Whilst looking at breaches will clearly always be part of the function, I think that the CCMC could have more impact if it consciously positions itself as being focused on monitoring that delivers assurance through communication to the community and through encouraging continuous improvement of bank practices, rather than being the gatekeeper of the minimum that is acceptable under the Code.



6.2. Data and analysis

Under my proposed new emphasis on ‘monitoring’, assurance to the community is a critical dimension. At the moment, the CCMC’s Annual Report is its principal tool for this. From my conversations with stakeholders, it seems to me that the Annual Report is most effective where it both presents and analyses data about the ACS program. For example, last year’s Annual Report states that banks reported between 18% and 80% of complaints resulted in an outcome for the customer – and that the CCMC will engage with banks in the coming year to better understand this variation. I think that is the kind of analysis that is value-adding and seen to be value-adding.

On the other hand, where the CCMC’s Annual Report simply summarises signatory banks’ description of their processes, this runs the risk of sounding perfunctory. (An example of this type of reporting is last year’s Annual Report information about bank procedures to ensure that systems accurately reflect the terms and conditions of a product.) The problem to the sceptical reader is that banks will, of course, describe their processes to the CCMC as they should be – which may not be as they actually are.

Equally, data is not very meaningful without analysis and cross-reference to other data. To my mind, it is hard for a reader to draw conclusions from the Annual Report detailed breach data. More explanation, trend data and cross referring of this data (or perhaps critical aspects of this data) against other data would greatly increase the utility of this information. An excellent example of cross-referred data is the chart that has appeared in the CCMC’s Annual Report for the last 5 years comparing requests for financial difficulty assistance and assistance granted – a chart that I rely upon and reproduce in the Code Report.

As discussed in the Code Report, I think that the CCMC can play a greater role in making bank information public, including tracking banks’ compliance performance and in explaining to the public the reasons for the figures. Signatory banks have sophisticated metrics to analyse their compliance performance. I think that there is scope for the CCMC both to collect better data itself over time and to deepen its insights by leveraging signatory bank internal management reporting of compliance metrics. This should be analysed and used for the ‘data translator’ role that I describe in the Code Report. (Of course, this should be done in a way that is sensitive to banks’ commerciality and competitiveness.)

If this occurs, it seems to me that the CCMC’s Annual Reports will be of greater interest to the community. As for OMI reports, the CCMC should actively promote its work including to the media in the interests of increasing its profile as an active monitor of signatory banks.

No matter how well written, a single annual report announcement will not keep monitoring of the Code in the public eye for terribly long. I do not think that the CCMC should be in the business of trying to be in the news, however the use of media releases a few times a year (say – for the Annual Report, an own-motion-inquiry and a follow-up inquiry) will help maintain a more reasonable profile. It is also important that the ‘tone’ of CCMC media communications reflect its changing responsibilities. While it is not a ‘black-letter’ regulator, nor a ‘publicity-hound’, it must nonetheless present its findings in a plain-speaking, robust way.



Once the industry has responded to the Code Review, there should be sufficient guidance to enable the CCMC to begin to take action prior to final settlement of the new Code and Mandate.

Recommendation E

The CCMC should rethink its ACS and Annual Report with a view to collecting, analysing and presenting data in a way that is more meaningful. Whilst breach data should be included, this should not be such a dominant focus. Rather the aim should be to encourage best practice. The CCMC should issue a media release to encourage media to report the CCMC's work so that the Code is seen to be actively monitored.



7. STAKEHOLDER ENGAGEMENT

7.1.1. Current practice

The CCMC has an active program of stakeholder engagement – generally done on a regular 12 month cycle. This includes:

- Quarterly liaison meetings with ASIC in addition to meetings to discuss specific issues
- Meetings with the ABA
- The CCMC Annual Forum for signatory banks, the ABA and FOS
- Regular signatory bank teleconferences
- Regular meetings with individual banks
- Engagement with number of consumer and small business organisations including Financial Counselling Australia, Legal Aid NSW, Australian Small Business and Family Enterprise Ombudsman, Financial and Consumer Rights Council, Consumer Action Law Centre, Business Enterprises Centres
- Regular meetings with FOS and its Lead Ombudsman
- The Bulletin - a quarterly publication that is distributed to key stakeholders and CCMC website subscribers

7.1.2. Observations

CCMC's effort at engagement with stakeholders did not attract any particular criticism during the consultations and from my perspective, engagement initiatives are as I would expect. To some extent, its limited current role affected the value that some stakeholders felt that they received from the engagement but this is entirely consistent with feedback across all of the CCMC functions.

7.1.3. Future directions

My recommendations in the Code Review regarding CCMC engagement do not go to general liaison and relationship building – which I think is done well. Rather, the recommendations go to supporting the new role for CCMC that I set out in that report.

If accepted, my Code recommendations will broaden the subject matter for stakeholder engagement – through broader Code 'reach' and through greater sharing of monitoring information; will systematise the gathering of intelligence from the CCMC stakeholder network (Chapter 20.8) and provide a focus for building awareness of CCMC monitoring activity amongst influential stakeholder groups (Chapter 20.6).



7.1.4. Early gains

As for other aspects of the CCMC functions, once industry has provided its response to the Code Review, the CCMC should begin to open discussion with relevant stakeholder groups about how to give practical application to the recommended changes.



8. CCMC GOVERNANCE AND STAFFING

As permitted under clause 3.1 of its Mandate, the CCMC is provided with administrative and staffing services by FOS. At one level, this is simply an outsourced service arrangement, which provides what is a quite small staff with a 'home' of some scale, infrastructure and professional administration. The arrangement has other dimensions which provide significant additional advantages. It provides clear separation from the banking industry, is placed in an environment accustomed to the importance of maintaining independence, is co-located with other code monitoring functions (a rare specialisation) and provides some access to high level independent banking expertise.

8.1. Governance

8.1.1. Current practice

The Committee itself acts as both a decision-maker and as a governing body, albeit in the latter responsibility it does not act completely alone. It has relationships with FOS as the service provider and the ABA as the (arms-length) funding body and representative of the banking industry 'owners' of the Code.

As previously noted, the Committee is made up of an independent Chairperson, a banking industry representative and a customer representative. These three act as a 'panel' – so that monitoring and investigative work is done by a small number of staff, but key decisions and reports are considered and signed off by the Committee, with some formal delegation of powers to staff.

8.1.2. Observations

The location of the CCMC operation within the independent Code Compliance and Monitoring team of FOS is sensible in my view and while it can create some confusion externally, it brings worthwhile advantages. The system of governance generally works well in my view and accommodates the unique needs of the monitoring function in a practical way.

One slight weakness to the arrangement is that some stakeholders continue to see anything funded by industry as compromised in its independence. In my experience, this view is usually not based on close observation and is more of a suspicion formed from a distance. I do not see an alternative to industry funding of its own Code and see the arrangements for independent decision-making and governance as sound.

I think that the CCMC's low-key approach to its task does play somewhat to this perception of compromise and my recommendations for a more open, transparent approach to monitoring are partly aimed at more robustly assuring the community of CCMC independence.

Another weakness in the governance arrangements is that the single customer representative on the Panel is supposed to bring the perspective of both individual and small business



customers to the CCMC decision-making. In practice, it is difficult to find a suitably skilled and experienced candidate that has sufficient background in both individual and small business customer issues with the Code, who would be credible in the eyes of all of the constituent organisations.

8.1.3. Future directions

In my Review of the Code, in recognition of the proposed broader coverage of small business, I have recommended the addition of a fourth member of the Panel, specifically to bring small business customer experience to the table.

This may introduce some further complication to the appointment and operations of the Panel, but I think it will bring a substantive additional skillset along with profile and some additional credibility for the CCMC.

8.1.4. Early gains

Provided that the banking industry agree with the recommendation for a fourth member of the Panel, the CCMC could begin steps towards this by identifying 2 or 3 representatives of the small business sector and inviting them (one at a time) to attend CCMC meetings as a guest on an advisory basis. Not, I hasten to say, as a 'pre-selection', rather to begin the dialogue around small business issues and to help the Independent Chairperson to develop an understanding of how to integrate an additional member into the operations of the Panel.

8.2. Staffing

8.2.1. Current practice

FOS's Code Compliance and Monitoring team has around a dozen staff who are also responsible for monitoring other industry Codes. The General Manager who leads the team is, as part of her portfolio of responsibilities, also CEO of the CCMC. Some of her team work exclusively in the banking sub-team.

8.2.2. Observations

I found the team to be dedicated, professional and with good all-round skills – suited to the mix of work that the CCMC has been doing. The team has also built up quite some experience in the unusual business of code monitoring – a considerable asset to the CCMC.

I have earlier mentioned some stakeholder feedback that at times the CCMC has demonstrated a lack of deep understanding of banking. In a rapidly changing environment, it is clearly a challenge to stay abreast with the intricacies of how banking products are processed and the limitations of their systems.



In the Code Report, I recommend that the CCMC permanent staff mix should explicitly include strong data analytic skills. This is a recognition that banking is an information and data business and so monitoring requires a heavy emphasis on those skills. I also recommend that CCMC funding should allow for the ability to temporarily hire in specialist expertise. For example, external expert advice about banking compliance metrics would be helpful to gather ideas about categories of data that can usefully be collected as part of the ACS process and compared to shine a light on bank compliance performance (for example, in the Code Report I set out the ratio of direct debit complaints to direct debit cancellation transactions). Expert assistance would also be useful for the purposes of OMI's.

Again this need not wait for change to the Code and the CCMC's Mandate. Once industry is supportive in-principle, I think that next year's budget should fund the CCMC to a level that gives it the financial capacity to access to these skills.

Recommendation F

The CCMC's resourcing for next year and succeeding financial years should be sufficient to enable the CCMC to recruit a permanent staff member with strong data analytics skills and to hire in specialist expertise, for example, for ACS-related advice and own motion inquiries with a view to enhancing the insights in the CCMC's public reporting.



9. NEXT STEPS

In the Review of the Code itself, I have included a brief chapter covering a few observations for next steps for the development and implementation of a new Code.

The key steps for the banking industry for 2017 will include:

1. Publication of my Reports into the Code and the CCMC
2. The industry's initial and then detailed response
3. Commencing Code drafting
4. Stakeholder consultation
5. Banking industry agreement and approval of a draft new Code
6. ASIC approval of the Code
7. Implementation

One of the challenges for the industry will be to maintain momentum and to ensure that stakeholders see satisfactory progress (not an easy task in complex, multi-party environment).

Action on the monitoring front will be an important part of achieving a credible response to the Better Banking initiatives including the Code and other reviews from industry. In this report I have made a number of suggestions for ways in which the CCMC could support this objective by beginning its own steps towards a new Code.



ATTACHMENT 1 – REVIEW TERMS OF REFERENCE

Scope & Terms of Reference for the Review of the Code Compliance Monitoring Committee

Introduction

The Code Compliance Monitoring Committee (CCMC) is an independent compliance monitoring body established under clause 36 of the 2013 Code of Banking Practice (the Code).

The CCMC's purpose is to monitor compliance with the Code, thereby contributing to the improvement of standards of practice and service by code-subscribing banks.

The CCMC's Mandate (the Mandate), together with the Code, sets out the terms that govern the functions and operations of the CCMC, to which the Code Subscribers have agreed. The Mandate is published with the Code by the Australian Bankers' Association (ABA).

The Code and Mandate state that the CCMC has the following functions:

- To investigate, and to determine, an allegation from any person that a code-subscribing bank has breached the Code.
- To monitor code-subscribing banks' compliance with the Code's obligations.
- To monitor any aspects of the Code that are referred to the CCMC by the ABA.

On 20 April 2016, the ABA announced that a review of the Code would be conducted in 2016. Clause 14.3 of the Mandate requires the CCMC to arrange a periodic review of its activities, to coincide with the periodic review of the Code by the ABA.

This review of the CCMC is, therefore, being undertaken in accordance with that requirement.

Independent Reviewer

In commissioning this review of its activities, and after consultation with the ABA and other stakeholders, the CCMC has appointed Philip Khoury, of Cameronralph Navigator, an independent person with relevant qualifications and experience to conduct this review.

Mr Khoury will also conduct the review of the Code. The CCMC considers that this represents a prudent and efficient course of action and does not create a conflict of interest.



Scope of the Review

The Scope of this review is to assess the CCMC's performance of its functions and operations in respect to the requirements set out in its Mandate.

In doing so the review will consider:

- the Committee's performance of its investigations role
- the Committee's performance of its monitoring role
- the Committee's performance of its role of monitoring aspects of the Code referred by the ABA
- the Committee's external relationships
- the Governance arrangements put in place by the Committee.

The review will also consider the performance of the CCMC taking into account good practice standards such as:

- Those parts of ASIC's Regulatory Guide 183: Approval of financial services sector codes of conduct that relate to the operation of the CCMC.
- The principles of the 'Benchmarks for industry-based Customer Dispute Resolution Schemes' that relate to the operation of the CCMC.
- The Australian Privacy Principles, published by the Office of the Australian Information Commissioner.

In completing this review, recommendations which will improve the CCMC's functions and operations should be made where appropriate.

Further Terms of Reference are provided below.

Terms of Reference

In completing this review, reference will be made to the further terms listed below. As noted in the Scope, this review will assess the CCMC's performance of its functions and operations, and, where appropriate, make recommendations for improvements.

1. The CCMC's performance of its monitoring and investigation role
 - a. The extent to which the CCMC achieves its purpose of creating a better banking experience by monitoring compliance with the Code, and thereby contributing to the improvement of standards of practice and service by code-subscribing banks.
 - b. The extent to which the CCMC is properly interpreting its role under the Code and Mandate.
 - c. Consideration of whether the CCMC has adopted an appropriate and effective approach to compliance monitoring and compliance investigations.
 - d. The appropriateness of the sanctions available to the CCMC with respect to its role.
 - e. The extent the CCMC's performance of its role has provided credibility to the Code as a self-regulatory scheme.



- f. The extent to which the CCMC responds appropriately to the concerns of customers who raise allegations of breaches of the Code.

2. The CCMC's external relationships

- a. The appropriateness of the CCMC's public profile.
- b. The effectiveness of the relationships the CCMC has developed with its stakeholders.
- c. The adequacy of the CCMC's access to necessary information from stakeholders to enable it to assess bank's compliance with the Code.

3. The practical application of the CCMC's role

- a. How well the CCMC has prioritised the various compliance monitoring activities it is required to undertake.
- b. Whether fair, efficient and transparent procedures for dealing with alleged breaches of the Code have been put in place and the extent to which these procedures are being followed.
- c. Whether, and to what extent, the CCMC has acted in accordance with the principles of the 'Benchmarks for industry-based Customer Dispute Resolution Schemes' when dealing with alleged breaches of the Code.
- d. The extent to which the CCMC fulfils its functions in accordance with the guidance related to code administration set out in ASIC's Regulatory Guide 183: Approval of financial services sector codes of conduct.

4. Governance requirements

- a. The extent to which the CCMC has met its reporting requirements.
- b. Whether the CCMC has acted fairly, independently and appropriately with respect to its role under the Code and its Mandate.
- c. Whether the CCMC has put in place procedures which ensure it acts fairly, efficiently and transparently in all its dealings and the extent to which these procedures are being followed.
- d. The appropriateness of the current structure of the CCMC and its support staff, in particular whether it has sufficient resources to fulfil its role.
- e. The extent, if any, to which the CCMC has been prevented from fulfilling its functions because of the requirements and restrictions of its Mandate and clause 36 of the Code.

ATTACHMENT 2 - CHAPTER 20 FROM CODE REPORT

20. CODE MONITORING AND COMPLIANCE

20.1 Background

The Code is monitored for compliance by the Code Compliance Monitoring Committee ("CCMC"), a committee of 3 people who are supported by a small staff. The rules governing its approach are currently in clause 36 of the Code (obligations on the banks regarding Code monitoring) and in the CCMC Mandate (setting out what the CCMC is meant and permitted to do).

During my review, I heard much criticism of the powers and scope of this compliance monitoring function. These go to an inadequate profile, inadequate resourcing, limits to the CCMC's powers to investigate, a lack of available sanctions, inadequate public reporting and a lack of coordination with external disputes resolution schemes and with regulators. Some saw the CCMC to be deliberately designed to be as small in impact as possible.

Most feedback from industry was quite positive about the CCMC, however I did hear a few criticisms from industry of the opposite – of CCMC pursuing trivial matters already acknowledged by banks, overstepping its remit, of 'fishing' for issues and of failing to understand 'how banking really works'.

A feature of the criticisms, whether they come from consumers, politicians, other stakeholders or signatory banks is a confusion of views as to the CCMC's role and the place of the Code in the regulatory framework. It seems to me that the only way to make sense of the various criticisms is to begin by forming my own view as to its proper role going forward, taking into account the changes to the Code that I am recommending. From there, I can weigh up the ideas put to me and make any recommendations for change.

A linked question is whether to recommend that the Code of Banking Practice is submitted to ASIC for approval under Corporations Act section 1101A – as proposed by a number of non-industry stakeholders and generally opposed by industry. I think that question can also only be properly considered once a clear view of the Code's role is established. I turn to this question in the following chapter.

I have separately been asked to conduct an Independent Review of the CCMC. With respect to role, remit and powers, the issues for both Reviews are the same, however for the CCMC Review, I am also reviewing the effectiveness of its operations within the constraints of its current mandate. I will separately publish a Report about the CCMC which will in substance repeat this section of the Code Review – and go on to evaluate CCMC's current operations in greater detail.



20.2 Current CCMC operations

The CCMC is operated on behalf of the ABA by FOS employed-staff. These staff are part of FOS's independent Code Compliance and Monitoring team which has around a dozen staff who are also responsible for monitoring other industry Codes. The Committee itself is made up of an independent Chairperson, a banking industry representative and a consumer representative. These three act as a 'panel' – so that monitoring and investigative work is done by a small number of staff, but the decisions and reports are considered and signed off by the Committee, except to the extent that the Committee has formally delegated powers to staff.

In practice, the CCMC has several channels for 'monitoring compliance' with the Code.

1. It requires all signatory banks to lodge an Annual Compliance Statement setting out information about their risk and compliance framework, policies and procedures to address Code obligations, financial difficulty assistance, types and numbers of breaches recorded and any remedial action taken, etc;
2. It conducts individual investigations of allegations of Code breaches made by any person;
3. It can receive a referral from the ABA, asking it to investigate a matter (although this has never happened); and
4. It conducts 'own motion inquiries' ("OMI"), (one per year for the last two years), into a matter of its choosing, which involves asking banks to provide information on the subject matter chosen – and producing a report with recommendations for the banks. A risk-based approach is used for selecting and targeting the OMI – and the Annual Compliance Statement is typically used to collect information on implementation of any previous OMI recommendations.

The CCMC also produces an Annual Report in which it sets out its work for the year, including the individual investigations and a summary of its own motion inquiry, and provides some de-identified data about banks compliance with the Code.

20.3 Stakeholder criticisms

Non-industry stakeholders see the CCMC's configuration as 'limited'. Specific feedback included:

- The CCMC is seen as low profile to the point of invisibility. The Committee's name does not include the word 'bank'.
- There was criticism of the limitation of one year to bring an alleged breach to the CCMC as far too restrictive.
- The CCMC's powers are seen as toothless. Most consumers who bring an allegation of a breach are shocked to discover that there is no penalty or consequence for the bank if an investigation does find a breach. As a result, many stakeholders view the CCMC individual breach investigations as adding little value.



- Criticism that the CCMC Mandate specifically restricts the CCMC's ability to investigate non-compliance with Clauses 3 and 4 (key commitments and compliance with laws).
- Criticism of the CCMC's 'failure' to name banks more often in its reporting.
- CCMC reporting also came in for criticism because of lack of comparability of bank data.
- The CCMC is at times criticised for lack of deep expertise in some aspects of banking.
- For the last two years, CCMC has conducted a single OMI per annum – this was widely seen as manifestly inadequate.
- Some stakeholders called for much more cooperation between CCMC and ASIC and between CCMC and FOS.

Overwhelmingly, these are not criticisms of the CCMC's performance, nor of banks cooperation with the CCMC – they are of the Code itself, of the CCMC mandate and of current resourcing.

In parallel to this Review, I have been conducting a more detailed review of the effectiveness of the CCMC's function. That task will be completed shortly after this Code Report, however to ensure that my comments in this section are not misinterpreted, in summary the CCMC Review report will say that I found the CCMC's operation to be professional and well-run within the limitations it faces.

20.4 Current Role of CCMC

Code customers (both individuals and small businesses) are quite unclear about the CCMC's role. Despite the CCMC being careful on its website to position its role as being about Code breaches and, for example, using the language of 'report' as distinct from 'complaint', many Code customers assume that the CCMC is simply another dispute resolution mechanism such as FOS or a regulatory body like ASIC. While it is true that some who bring issues to CCMC are in a state of high anxiety and in no mood to listen, there is clearly an expectation gap that needs to be addressed.

More closely engaged stakeholders' expectations of the CCMC role also varied, with some demanding regulator-like powers and behaviour and others arguing for an approach based on 'ownership' from industry and a focus on openness and goodwill.

The CCMC's current activity shows something of a contradiction as to its focus. Its processes and profile seem to be pitched to a strong emphasis on individual breaches of the Code (heavily prescribed investigation processes for individual breaches and scant mention of how own motion inquiries might be conducted or intelligence gathering might occur).

Yet investigation of individual breaches is the part of the CCMC's function that least satisfies external stakeholders. That is because even where a breach is established, the Code customer invariably leaves dissatisfied and the bank simply accepts the one-off breach as one of many that it has likely found itself. In general, it is only when the individual investigation unearths a more systemic issue that genuine value is added.



CCMC own motion inquiries enjoy a better level of satisfaction – both within banks and amongst external stakeholders - although external stakeholders think that the CCMC could usefully do more of these than has been the recent practice. The inquiries are sometimes also criticised for a lack of depth of expertise.

The CCMC's public reporting is seen as a positive – but it too has been criticised for its limitations (incompatible statistics, not enough enquiry to deepen the analysis, little trend information, too 'soft' on banks, an absence of use of both IDR and EDR complaints information, etc).

20.5 Future role for the CCMC

I have concluded that while a prescriptive, regulatory style of operation will need to be some part of its operations, this is not where the CCMC can add the most value. With the development of a great deal of law in this space, and the increased powers and resourcing granted to ASIC, the CCMC is likely to disappoint if it is being compared with 'hard' government regulatory standards and enforcement.

My preference is for the CCMC to evolve away from the idea of being a quasi-regulator towards being more of a mechanism for community assurance through active monitoring and promoting higher standards and continuous improvement of banking practice. A role of this nature fits 'alongside' regulation, with the focus being the commitments in the Code that clearly go 'beyond the law' and so that are not the realm of government regulation. (If recommendations in other Chapters of my Report are accepted, the Code will more extensively go 'beyond the law' giving the CCMC a clearer scope.)

I think that the most important word in the description of the CCMC is 'monitoring'. The Code is a promise to the community – and the CCMC function should be focused on providing assurance to the community that the Code is working. It is difficult to avoid the conclusion that at least some part of the loss of trust in banks is that the mechanism for monitoring the Code has not been sufficiently visible nor provided a robust level of assurance.

Continuing that line of reasoning, I see the greatest CCMC value coming from activities that – directly or indirectly – provide assurance to the community and are likely to raise standards of conduct and compliance across the industry:

5. Prioritising investigative/analytical effort on gathering evidence of **systemic non-compliance** (common problems, complaint and reported breach trends, etc).
6. **Transparency** – providing industry and the community with investigative, statistical and analytical information demonstrating the level of compliance with the Code and identifying any trends and potential problem areas.
7. Supporting **continuous improvement** of banking practice by providing feedback as to the effectiveness of the implementation of the Code, including the operation of Industry Guidelines, identifying and promoting **good practice** conduct and compliance, identifying areas for new or strengthened Code provisions or Industry Guidelines, and



reporting about longer term Code-related projects to provide assurance to the community about progress.

It is important that stakeholders are clear that while the CCMC welcomes reports of suspected breaches of the Code from individual consumers, it has no role in obtaining redress and will only investigate an individual report where there is value that can be applied across the broader population and across industry.

For the CCMC to be able to credibly deliver on the responsibilities above, it has to be trusted and that means being appropriately visible and possessing sufficiently credible powers, albeit focused on system improvement and better customer outcomes rather than 'punishment'.

Recommendation 79

The Code and the CCMC Mandate should be redrafted to make it clear that the primary focus of the CCMC should be its monitoring and public assurance – with the areas of greatest value-adding activity being:

- a) Taking a risk-based approach to prioritise investigative effort on systemic non-compliance (common problems, complaint and reported breach trends, etc);
- b) Transparency – providing industry and community with information demonstrating compliance with the Code and identifying trends and potential problem areas; and
- c) Supporting continuous improvement of banking practice by providing feedback on implementation, identifying and promoting good practice conduct and compliance, and identifying areas for new and strengthened Code provisions or industry guidelines.

In my view, a focus on the above areas of value-add provides a basis to recommend some specific improvements – some directly related and some that go to visibility and trust. These are discussed below.

20.6 Greater visibility

I do not see a high public profile for the CCMC function as particularly essential to its successful day-to-day operation. There are a tiny number of people who would have need for day-to-day familiarity with the CCMC. For most consumers and small businesses, at a practical level, it is sufficient that the CCMC can be found if needed.

However, the current 'presence' of the CCMC is clearly inadequate in stakeholder's eyes, and I do see some short-term lifting of its profile as needed – in particular in relation to its strengthened remit to monitor a more robust Code and a greater focus on systemic Code effectiveness as discussed above. Such publicity would be a demonstration of the industry's commitment to being held accountable for its promises to the community.

I recommend that profile-raising effort in the medium to long term be focused on points of advocacy, such as industry associations, consumer advocates and other lobby organisations.



The purpose here is not to ‘fish for individual breaches’, but to provide assurance that the Code is being monitored and that the CCMC is being active in its role.

In the short term, I propose some modest steps. First, the ABA announcements of its response to this Report and of the new Code should give some weight to the strengthening of Code monitoring. Second, the monitoring function must have a new name – one that mentions the word ‘bank’. I have recommended elsewhere that the Code itself should be renamed the “Banking Code”- for similar reasons. The Code monitoring function should similarly have a plain-speaking, straightforward name that makes it clear what its function is. I suggest “Banking Code Monitoring Panel”.

Third, the function’s Mandate must make it clear that the CCMC function has a responsibility for promoting transparency and trust around the Code – therefore it will have more of a role in communicating to the public about the effectiveness of the Code than currently is the case – and it follows, something of a greater profile.

Fourth, for the avoidance of doubt, the Code should embed a responsibility on the CCMC to publish such information about the effectiveness of and compliance with the Code, including inquiry reports, statistical data, determinations and case studies that would meet its role to enhance trust and transparency.

Recommendation 80

Promotion of awareness of the CCMC should be focused on points of advocacy, such as industry associations, consumer advocates and other lobby organisations. The purpose here is to provide assurance that the Code is being monitored and that the CCMC is being active in its role.

Recommendation 81

The CCMC should be renamed the “Banking Code Monitoring Panel”.

Recommendation 82

The CCMC Mandate should explicitly recognise the CCMC role in promoting transparency and trust in signatory banks’ compliance with the Code and embed a responsibility for publishing information about the effectiveness of and compliance with the Code, including statistics, results of inquiries, Investigation outcomes and case studies as appropriate.

20.7 Strengthening collection of compliance information

As the key proposed role of the CCMC function is monitoring – the function should have and be seen to have an ability to collect information from wherever it is reasonably available



including sources that would be intuitively expected by stakeholders. The language around this should be inclusive and positive – not limiting or negatively framed.

I agree with most stakeholders, that for credibility, these sources must be seen as more robust and open than the current channels represent. The CCMC should be informed by regular, quality information sourced from:

- The Annual Compliance Statement;
- Code customers – ‘reporting’ suspected breaches and from selected individual investigations of alleged breaches;
- Own motion inquiries;
- Publicly available information including, for example, Parliamentary Inquiries and media reports;
- The banks internal disputes resolution processes and the bank internal Customer Advocates (see also discussion at Chapter 0 on sharing data);
- The banks’ own systemic conduct and Code compliance review processes, including the banks’ identification of compliance patterns and trends (internally and across the industry) and their plans for responding to these and prioritising them for attention;
- The banks’ external disputes resolution services (currently FOS); and
- From consumer representative and other stakeholder organisations.

Note that CCMC should not be passive in the area of Code customer complaints. For example, it is a common perception that small business and rural business customers under-report in complaints and breaches statistics. Anecdotally, this is partly through ignorance of CCMC’s existence and partly because typical small business problems require resolution in much tighter timeframes than many retail consumer issues (once the business cannot pay its suppliers, it is effectively finished and most owners move on). I would expect to see the CCMC function taking some steps to actively seek information regarding alleged breaches of the Code from groups that may not be reporting at a reasonably representative level.

Similarly, the CCMC should be looking to systematising input from consumer representative organisations. Currently, these organisations generally report areas of concern through consultative forums and much of that input will be anecdotal. Although the numbers involved are comparatively small, any ability to substantiate with data will strengthen the CCMC’s ability to act on issues raised.

I also support the suggestion that consumer advocacy groups or other reputable stakeholder organisations should be able to refer a matter they believe to be serious or systemic to the CCMC. They are in a unique position to identify Code customer banking issues that are repeatedly occurring, and it would seem sensible and consistent with the remit of the CCMC to welcome their insights.

This is along the lines of the ‘super-complaint’ that registered consumer representative groups are able to lodge in the UK. I think that the regime that applies in the UK is somewhat



different, with a system in place for government registration to ensure that a consumer group is a credible, bona fide organisation. I do not think that the working model that the CCMC 'must investigate or explain why not' is the right one for this Code. I do think that the Code should explain all organisational referrals in the same way, drawing no distinction between referrals from stakeholder organisations – and that there should be an obligation to communicate back to the referring organisation as to the outcome of the referral. In terms of the relative merits or reputation of any referring organisation, I see this being handled in the usual way – the response from the CCMC would be appropriate to the quality and relevance of the referral.

Banks have been criticised, in some cases unfairly, for avoiding public disclosure of breaches and of withholding information about breaches of the Code – until the last minute or until the matter is 'forced into the open'. The new Code should minimise the opportunity for this to be a point of criticism. I am recommending quarterly reporting to the CCMC of all Code breaches. I do not think this will be an especially material change, but it is consistent with the promise of transparency and a better look than being accused of 'withholding' information from the CCMC for up to 12 months. While I understand that many of the signatory banks have very manual processes for reporting Code breaches, this change should not increase overall reporting workload.

Recommendation 83

The Code should oblige signatory banks to be proactive in providing information to the CCMC including arranging regular engagement with their internal disputes resolution area and internal Customer Advocate.

Recommendation 84

The Code and the CCMC Mandate should explicitly set out its role and responsibility to proactively gather relevant information about the effectiveness of and compliance with the Code – including from sources external to the banks such as bank customers, Australian Small Business Ombudsman, consumer advocacy groups, financial counsellor networks, Legal Aid organisations, community legal centres, consumer affairs departments and other government regulators.

Recommendation 85

The Code and CCMC Mandate should make it clear that referrals from external dispute resolution schemes, the ABA, regulators, consumer or other stakeholder organisations will similarly be fed into CCMC priority setting, but will not necessarily be automatically investigated, however in each case, the CCMC will provide a written explanation of the reasons for any decision not to pursue a referred matter.



Recommendation 86

The Code should oblige signatory banks to report breach information as required by the CCMC on a quarterly basis.

20.7.1 Access to IDR data

Greater transparency in relation to signatory banks internal disputes resolution (IDR) information was called for by many groups of stakeholders. I understand why this is a sensitive area for banks, both in terms of overall public perceptions and in terms of competitive comparisons.

I do think that there are opportunities for improved use of this internal data by CCMC in its monitoring role. For example, CCMC could receive copies of internal management reports on complaint numbers and trends. This could be part of the relationship between the banks' new internal Customer Advocates and the CCMC.

Another example might be for an OMI request to be for signatory banks, on a project basis, to collect additional information about a specific type of complaint – cancellation of direct debits comes to mind.

I think there are a number of excellent opportunities for sensible collaboration in this space, however they depend on a changed remit, powers and capability for the CCMC and the confidence in the relationship between CCMC and the banks to develop.

20.7.2 Access to EDR data

Stakeholders are also asking for CCMC to have greater access to EDR (currently FOS) information and for EDR to be more proactive in referring matters to CCMC. Much of this feedback included a level of surprise that this was not already the case.

I think that the logic is clear, and in principle I am supportive, however I recognise that there are some practical issues that must be considered.

1. Data limitations

Having some first-hand knowledge of EDR complaints data, it is unlikely that this is the mine of information often assumed. All EDR schemes that I am aware of are under considerable workload and time pressure – and understandably, they have a focus on resolving complaints, not on creating a database of precisely classified complaints information. If a complaint can be resolved by reference to the law or banks' internal processes or simply by negotiation, the question of whether the matter could be a potential breach of the Code may never come up.

Where there is a mention of a Code or Industry Guideline within a case record, it may well be no more than a passing reference to a provision within the Code and by no means a definitive



finding of a breach. Even where a matter progresses to an Ombudsman's determination, whether the detail of the matter included a potential brush with the Code may not be recorded.

This is not a failing of EDR processes. This reflects the different purpose of the organisations and my view is that it would be a mistake to unduly distract EDR schemes from their core purpose of resolving consumer complaints. Of course, this does not mean that EDR information will be of no use to CCMC, rather that learning from the data will not be straightforward.

2. Improving EDR data

I am sceptical that requiring EDR staff to record instances of potential Code breaches would be successful in building a mineable database of potential Code breach information. Unless EDR were being specifically resourced to look at this aspect of every complaint, this could quickly become a matter of ticking a box, with the risk of becoming perfunctory and producing unhelpful 'garbage data'.

3. Improving referrals

I have also given some thought to the idea that EDR staff – perhaps the most senior, should be required to more actively refer potential Code breaches to CCMC. I think this plan suffers from the same problems as trying to force data recording. It is not 'core business' for EDR staff who are under significant workload pressure. I think this would be an irritation and struggle to be sustainably effective.

A better basis for referrals in my view is for the systemic issues team within an EDR scheme to have an explicit responsibility to review its own work for evidence of Code Breaches and to pass this on to the CCMC. The systemic issues staff are already thinking about the range of issues that impact on matters of greater impact and are much better placed to form a view about whether provisions of the Code may have been breached. This would also ensure that EDR referrals are already focused on issues of a systemic nature, consistent with the focus I recommend for the future CCMC (see discussion at Chapter 20.8). This would involve far fewer people and be much lower cost and it is much easier for the managers and staff of two small teams with some commonality to sustain good working relationships over time.

Recommendation 87

CCMC should work towards an agreement with signatory banks' EDR schemes to establish an explicit responsibility for the scheme's Systemic Issues Team to refer to the CCMC any Code compliance issues the team identifies through its own work.

The arrangements should be set out in writing between the EDR scheme and CCMC.

4. Safeguards

The second major consideration is protecting the data of individuals on EDR databases. A number of important safeguards are needed. There would need to be controls for consumer



privacy consents, there would need to be a system for authorising CCMC staff and authorised contractors for access, policies to control which data could be accessed, systems of audit trails and so forth – as there are for current EDR staff.

Only CCMC staff and authorised contractors should have direct access to EDR data – ensuring that the Panel members are above any accusation of browsing or misusing information. EDR database administrators must have the right to audit and control CCMC use as they would any other access. The EDR scheme would need to budget for any associated costs. Any requests from CCMC for support or special assistance with reports or the like would have to be agreed by the scheme and explicitly funded by the CCMC.

All of these provisions should be the subject of protocols between the EDR scheme and the CCMC rather than attempt to cover them within the Code.

Recommendation 88

The CCMC and signatory banks' EDR schemes should develop protocols for appropriate exchange of information and access to relevant EDR data, subject to safeguards that include:

- a) Explicit consent from EDR scheme complainants;
- b) Restricting access only to CCMC staff and authorised contractors;
- c) CCMC staff subject to the same audit and security controls as EDR staff; and
- d) EDR costs are met.

The arrangements should be set out in writing between the EDR scheme and CCMC.

20.8 Focusing effort on systemic level issues

As part of focusing the CCMC function's effort on more value-adding activity, there must also be some reduction in effort on low value-adding activity. From my enquiries, it is clear that many individual investigations add very little value and often disappoint consumers - see comments under Chapters 20.3, 20.4 and 20.5. I do not suggest that no value can come from an individual consumer or small business operator bringing an allegation of a Code breach to the CCMC. The allegations or reports have value of themselves and the CCMC have made it quite clear to us that investigations of some of these do add considerable value and should be continued.

It is sensible for the CCMC function to be able to target its efforts at those investigations that will add the most. That will mean that some allegations will not be investigated, as the CCMC



has the discretion to do now⁷. A risk-based approach is the reality of modern compliance and regulatory activity.

While the CCMC has been careful in its public communication, some further re-casting of individual consumer and small business 'reports' to the CCMC would be helpful. To reduce any expectation of a full-blown investigation for all allegations of breaches, members of the public should be encouraged to 'report' to the CCMC – with the clear understanding that the CCMC will take on board that information and use it as part of its monitoring activity and risk-based targeting. An investigation may proceed – but in most cases, it will not. Note that the CCMC should refer any individual or small business to EDR if they have not already been there.

The balance to this approach is an overt increase in the effort going into other forms of information collection and own-motion inquiries. The CCMC Panel should develop a two or three year business plan (updated as needed) that addresses the issues that are highest risk to public trust in the Code and in signatory banks. In the interests of public confidence, it should explain the risk assessment used to arrive at its priorities and as appropriate where referrals have come from.

That forward thinking will better enable banks to prepare for, collect and provide specific information in the Annual Compliance Statement or for a planned OMI. It will also assist the CCMC to continue to develop the range of different formats for OMIs that suit the subject matter of the inquiry. These currently include broad-based inquiries, 'deep dives', follow-up to previous inquiries, etc.

Banks mentioned to us the need for forward planning to be able to ensure that they can meet CCMC information requests and to assist with OMIs. I expect banks to be very supportive in this endeavour as they say that they obtain considerable value from the internal reporting/feedback that CCMC is able to provide them.

While there may be some concern about potential confusion between 'systemic investigation' in the EDR context and 'systemic focus' in the CCMC context, there is a clear difference in my view. While both are looking at patterns, trends, or issues 'affecting multiple customers' – EDR is looking at specific examples of loss and redress for consumers – CCMC is not. It is looking for compliance with the Code, and supporting continuous improvement through feeding back non-compliance issues identified and good practice to the signatory banks.

⁷ Code Compliance Monitoring Committee Mandate para 6.3



Recommendation 89

The CCMC should adopt a risk-based approach to focus its effort, including:

- a) selecting which individual or small business reports of suspected breaches are investigated;
- b) where an individual or small business reports a suspected breach to CCMC and has not been to EDR, CCMC should refer them to the appropriate scheme; and
- c) selecting which referrals from other organisations it makes the subject of an own-motion-inquiry.

Recommendation 90

The Code, CCMC Mandate and CCMC communications material should adopt language that echoes the risk-based approach to be taken by the CCMC, including:

- a) that individuals that take their matter to CCMC are “reporting a suspected breach”;
- b) that there should be clear information that CCMC will use this ‘report’ information to inform its risk assessments – but will only investigate selected individual matters; and
- c) that referrals from EDR, the ABA, regulators or consumer organisations will similarly be fed into CCMC priority setting, but will not necessarily be automatically investigated.

Recommendation 91

The Code, CCMC Mandate and CCMC communications material should adopt language that emphasises the difference between EDR and Code monitoring, including:

- a) language in the Code, Mandate and public information should eliminate reference to ‘determinations’ and any other EDR-like terms;
- b) reduce the degree of detail and specificity regarding investigations in the Code, allowing the CCMC to tailor the process used to the matter at hand.

20.8.1 Timeframe for investigation

The current CCMC Mandate lists a number of matters that are outside the CCMC’s scope to investigate. It also provides that if the matter has not been brought to the CCMC within one year of the individual or organisation becoming aware of the alleged breach, it is excluded from scope (unless the matter was brought to the EDR scheme within that 1 year timeframe).



The ABA recommended that this period be increased to two years after the event. Others suggested that the timeframes should align with the EDR period of limitations (FOS' Terms of Reference allows for up to 6 years).

While I can see the practicality and simplicity of alignment, the CCMC should be focused on monitoring current effectiveness and on continuous improvement of process. It would be a waste in my view, for energy to be spent on determining breaches and improving processes that were up to 6 years old and almost certainly no longer current. I think the ABA suggestion of two years strikes a reasonable balance.

Recommendation 92

The CCMC should be empowered to investigate breaches of the Code for up to two years after the individual or organisation reporting the suspected breach became aware of the events in question or reported the matter to a relevant EDR organisation.

20.8.2 Limits to investigation and breach powers

Another issue under this head raised by a number of my correspondents was criticism of Clause 36 (b) which limits the CCMC's powers to monitor, investigate or report on breaches of Clauses 3 and 4 in isolation from any other detail breach under other clauses.

As I understand the background, this limitation was inserted as a result of the last Independent Review and the intention here was to avoid duplication and confusion about the CCMC's role. I deduce that there was concern about 'fishing expedition' investigations that might be framed very broadly, a finding of a breach where there was no specific evidence to rely on and duplicative CCMC investigations of alleged breaches of the law (Clause 4).

I agree that it would be inappropriate for the CCMC to undertake an investigation into compliance by signatory banks with the law. It is ASIC that is responsible for compliance with the law, not the CCMC. Equally it would be inappropriate for the CCMC to monitor compliance with a high level statement of principle where there are no specific Code obligations that give substance to the principle.

The problem is that Clause 3, as currently drafted, includes some high level statements of principle, but also some provisions that are more accurately categorised as obligations that the CCMC should be monitoring. For example, I consider that the CCMC should have jurisdiction to monitor the clarity and comprehensibility of bank signatory documents provided to Code customers (Clause 3.1(d)).

My proposed Code architecture (see Chapter 6.5) aims to address the issue of the CCMC's jurisdiction in the following ways:

- Reference to compliance with laws would be in the Preamble – and so outside the CCMC's monitoring jurisdiction.



- The CCMC would not be able to monitor compliance with the Principles in isolation from specific obligations.
- The CCMC would be able to monitor compliance with all obligations and would interpret and apply these in light of the Principles. In other words, the Principles would point to the spirit and intent of specific obligations.

The CCMC’s Mandate should also be redrafted. Consistent with my recommendations for the redrafting of the Code, the Mandate should be redrafted so as to be more positive and less cluttered with qualifiers. For example, Section C of the Mandate on Investigations opens with three paragraphs on what the CCMC can do, followed by seven paragraphs on what it cannot do. This approach diminishes the value of what is quite a significant collection of promises from signatory banks – in an attempt to mitigate against what I think are often quite remote risks.

Recommendation 93

The CCMC mandate should be redrafted along the lines recommended for the Code, in plain language and with a minimum of qualifiers and caveats.

20.9 Strengthening resourcing and skills

20.9.1 Resourcing

My recommendations will result in some need for increased resourcing for the CCMC, but this should not be by prescription or mandated in the Code itself. It should simply be a matter of negotiation between the future CCMC Panel and the ABA (and FOS as the service provider) – in light of identified priorities and a business plan.

Perhaps of greater significance in terms of costs may be the outcome of discussions/negotiations between CCMC and signatory banks – and CCMC and FOS in terms of routine information sharing to meet recommendations under Chapter 0 above. I think that any such costs are likely to be systems-driven and beyond my ability to estimate.

20.9.2 The Panel

From my interviews and from submissions, there are two ways in which the Panel’s skills and experience could be strengthened in stakeholders’ eyes – broadening the perspectives and increasing its standing.

5. Broaden perspectives

Under this head, I have in mind to explicitly include some small business and possibly agribusiness skills and experience, which would be an excellent signal to stakeholders and go some way to improving these sector’s understanding of the Code and the CCMC.



In an ideal world, I would have Panel members (currently Committee members) selected on a skills and experience mix basis rather than on the current representative basis. A tripartite selection panel made up of a representative from the ABA, consumer advocacy groups and the EDR scheme would select a group that between them, brings together the best mix of skills available and that ensures the relevant perspectives, including small business, are present.

I think it is likely too much to ask of this round of reform for constituent groups to surrender their right to appoint 'one of their own'. I think the simpler thing to do is to add another member to the future Panel with relevant small business and/or agribusiness skills and experience. Of course, like all appointees, this member would also have to have sound understanding of the environment, of self-regulation and of customer issues in banking.

The process for appointing this new additional member will need to be a little different to the methods for the existing members in order to involve the intended constituency groups – small business and agribusiness - otherwise the intended boost to those groups' confidence in the Panel may not eventuate. I suggest a hybrid method in the recommendation below.

6. Standing

It is also important to ensure that members of the Panel have a sufficiently senior profile amongst their constituents and the community. This profile is in part a function of how recently members were actively involved in their respective sectors and how senior they were or are perceived to be. This would equally apply to the Independent Chair and their perceived standing in the community.

These are unfair criteria in many ways, because knowledge of the Code and the CCMC operation can only be acquired through experience on the Panel. Unfair or not, the standing of a self-regulatory panel is often a function of who is a member, not necessarily what they can bring to the task. I am not suggesting any change to the current members - they have strong knowledge of the function and are in a very good position to advise on and manage any change – however standing is a factor that should be taken into account in future appointments.

Recommendation 94

The CCMC Panel should have a fourth member with small business and/or agribusiness skills and experience along with other relevant skills.

- a) This member should be appointed by the Chief Ombudsman of FOS and a consumer advocate member of the FOS Board, consulting with representative organisations from the small business and farming sectors.
- b) The Panel should have the option of sitting with 3 or 4 members depending on the matter being considered, however the Independent Chair of CCMC should have an additional casting vote to ensure against deadlock in a 4 person Panel.

A further dimension to the notion of 'standing' is the level within the bank at which the CCMC interacts. The banks have suggested that an annual meeting between the CCMC Panel



members and the CEO of each of the major signatory banks would be a way of demonstrating that the work of the CCMC was being taken seriously. I agree, although I would prefer to see this as a commitment of the CEO rather than a compliance issue.

20.9.3 Staffing

Without any criticism of current staff skills, the CCMC permanent staffing should explicitly recognise the need for data analysis skills – both for systemic investigations and for transparency reporting.

Also, while it is clear that the CCMC function requires a small permanent staffing (for support of the Panel, for collecting ACS data, for handling consumer enquiries, for liaison with banks, for individual investigations, etc), its expertise should be added to as needed for specific investigations on a project basis (eg. skills in audit, banking services and processes, specific product lines, etc).

In this way, the depth of skills for a specific (say) own motion inquiry can be strengthened in a highly targeted way – without building a larger permanent staffing.

Recommendation 95

The CCMC permanent staff mix should explicitly include strong data analytics skills.

Recommendation 96

The CCMC resourcing should allow for the ability to temporarily hire in specialist expertise for specific investigations or projects.

20.10 Sharing more data publicly

A number of stakeholders raised with me the idea that the banking industry should be more transparent and make more data about its operations available to the public and to researchers. This was a theme picked up in a number of other recent reports, including by Parliamentary Committees, the Productivity Commission and ASIC.

While it is clear that this would be seen as a positive step by the community, I accept that these are sensitive issues for signatory banks. The notion of greater transparency raises the risk for industry that data might be used 'against' signatory banks, or that commercial-in-confidence information might be leaked. There may also be some resentment that signatory banks are being held to a higher standard of accountability than (say) very large corporations such as mining companies, insurers or automobile manufacturers. While many in the community view banking as a utility or essential service akin to gas or water, not all within the sector necessarily accept this.



Another significant problem with transparency is that the banks' data is frequently not comparable – being based on internal distinctions that vary from bank to bank. Obtaining meaningful data about numbers of complaints or numbers of small business loans are two cases in point. Every bank's data is different.

I think it is a mistake to use these reasons to avoid sharing more information about the industry. First, it risks looking 'secretive'. Second, it cuts off an opportunity for banks to educate the public about the industry. As discussed elsewhere in this report, I have found that the numbers tell a story that is generally very positive to the banking industry. For the most part, the horror stories that excite the attention of the media or politicians and bring the industry into disrepute are the exception to thousands or even millions of unremarkable and successful transactions. It is only the numbers that tell that story.

I think that banks that are signatories to the Code have a significant opportunity to lead in this space and take a step towards greater transparency. I think this is an initiative that will go a long way to re-establishing the kind of trust that the banking industry is seeking.

I understand that banks are beginning to look at ways of making data of public interest more compatible, and I would encourage this to continue. I am however, aware of how difficult and slow this exercise can be. An additional way of doing this that provides for some protection against misuse and an opportunity to translate incompatible data would be to give the CCMC the responsibility of providing a greater range of information to the public. As an alternative to each bank attempting to either force all of its own data into one standard format (an enormous task) for the purposes of reporting – in addition, the CCMC could take on the role of understanding the differences between each banks internal data – and reporting at a level of equivalence. To borrow a term from the world of information technology – it could become the 'middleware' to progressively be able to make more of the banks' data transparently available.

Complaints data can be used to illustrate the approach I am recommending. In Chapter 19.1, I set out reasons for my view that the Code should not mandate a uniform approach to complaint recording.

Instead, I think that the CCMC, as a trusted and independent body, with the explicit role of monitoring, should analyse complaints data and to do the 'translation work' for the community and provide some assurance as to the figures equivalence. I think this would be more likely to generate cooperation from industry than looking to government regulators to progressively force consistency.

There would be practical limitations to this approach. For one thing, translated equivalent data would not be reliable enough for 'league table' comparisons and could not be used to criticise one bank over another. But equivalent data could be used to build up a picture of key issues for a signatory bank – eg. complaint growth trends for particular products. It could be used to make generalised observations – for example, the cohort of banks that have a particular approach to (say) cross-selling or debt collection have lower related complaints figures than the cohort who don't.

Financial difficulty data is also an area of great interest to stakeholders. At the moment, the CCMC publishes in its Annual Reports aggregate data about the number of requests for



financial difficulty assistance and the number of requests that were granted. But no insights are provided as to the different practices of signatory banks and, for example, the implications for debt recovery action by banks. A deeper analysis would be of great value to stakeholders generally.

I recognise that it might take a period of years to build up sufficiently useful data. I imagine that as part of the CCMC's business planning, some priorities would be set in relation to developing equivalent data and a workplan agreed and resourced. No doubt there would be much to be learned and some difficult issues to be resolved along the way.

Recommendation 97

The CCMC, with the committed assistance of signatory banks, should be explicitly tasked to progressively develop the ability to publicly report on relevant signatory bank data and statistics, including acting as the trusted 'translator' of disparate bank information, producing equivalent information to enable broader reporting.

20.11 Powers and sanctions

Throughout this report, I have emphasised my view that this voluntary Code should be focused on continuous improvement and public confidence. It is in this latter objective that calls have come from non-industry stakeholders for a more robust set of consequences or sanctions to be applied by the CCMC.

I have approached this issue with some caution. A voluntary Code is not government regulation. This Code must strike a balance between measures that strengthen credibility and public trust and continuing to have high levels of cooperation and openness from its signatory banks.

For completeness and credibility, it is, however, my view that any package of improvements that signatory banks put to the community arising from this Review must include some toughening of the compliance monitoring of the Code and the consequences for non-compliance.

In my view, a sensible, reasonably credible package would include:

1. The ability for CCMC to require rectification or implementation of recommendations in its own motion reports within a reasonable period of time determined by the CCMC after consultation with the bank.
2. The ability for the CCMC to require corrective advertising and/or publication of information relating to the breach.
3. The ability for the CCMC to specify that an independent compliance audit of the signatory bank's remediation be conducted at the bank's expense and provided to the CCMC.



4. Suspension or termination of status as a signatory to the Code.

I expect that there would be little or no cost to the CCMC and with the expected continuation of a cooperative approach, it would be rare that any of these would have to be imposed on a signatory bank.

I have not accepted all submissions put to me regarding sanctions. For example, I do not think it is correct for a breach to cause expulsion from the ABA – not all ABA members are signatories to the Code and there is sufficient variation in the scale and business models of member banks to persuade me that this is reasonable. I am advised that some member banks would not offer any services covered by the Code.

I also do not think that a framework of fines is appropriate to a voluntary Code (nor can I imagine an amount for a Code breach fine that would not be viewed as derisory in the context of organisations where revenues are measured in tens of billions of dollars).

Recommendation 98

The Code should strengthen the powers of CCMC, including the ability to:

- a) require rectification or implementation of CCMC recommendations from own motion inquiries within a reasonable period of time (to be specified by the CCMC after consultation with the signatory bank);
- b) require corrective advertising and/or publication of information;
- c) require an independent compliance audit, at the bank's expense, of the signatory bank's remediation actions; and
- d) suspend or terminate status as a signatory to the Code.

20.11.1 Compensatory gestures

An interesting proposal put to me was that signatory banks should offer a small compensatory financial gesture where a straightforward provision of the Code is not met. An example offered was for non-timely cancellation or failure to cancel a recurring payment. This it was argued, would be a moral equivalent to exception fees and penalties applied to customers for (say) late payments and be only fair in the circumstances. An example pointed to from another setting was small customer service payments commonly made in the telecommunications space.

At first blush, the idea has some merit. There is much resentment from customers about what is perceived as a double-standard in the relationship between them and their bank. I am sure that this would be something of a minor embarrassment that signatory banks would seek to avoid and no doubt for some customers, there would be some satisfaction on receipt. I also have no doubt that it would likely obtain some media attention on release of the industry response to this Report.



I think however, that there are some practical issues. Which breaches would attract compensatory payments? If not all breaches attracted compensation gestures, what would be the policy basis for the 'ins and outs'? How much should the payment be? (For some straightforward late service items there might be an equivalent late payment bank fee that could be used to justify the amount, but for others, it would not be so easy.) If there should be a range of payment amounts relating to the seriousness of the breach, in what circumstances would payments not apply? How would such an initiative sit with the philosophy of external dispute resolution where compensation is provided for financial loss, but usually not otherwise? Would an initiative of this kind further confuse the role of the CCMC vis a viz EDR.

I struggled to come up with practical responses to these issues and I am sceptical that the ABA could frame a system that would be accepted by all signatory banks. Even if a coherent policy for all of this could be found, I am also concerned any payment made would be seen as derisory at least as often as it was seen as fair. Finally, (however minor the amounts might be) this would take the Code into the conceptual area of compensation – the territory of IDR and EDR – and potentially setup an expectation by individuals alleging a breach that CCMC would investigate and enforce the compensatory gesture.

While there may be circumstances in which it would make sense for a signatory bank to voluntarily offer a goodwill payment where the bank has failed to comply with Code obligations (see discussion on direct debit cancellations at Chapter 15.2). I am not persuaded that I have a reasonable basis to propose a compensation regime as part of the Code.



ATTACHMENT 3 - DEFINED TERMS

Defined term	Explanation
ABA	Australian Bankers' Association – industry association that developed the Code
ACS	Annual Compliance Statement
ASIC	Australian Securities and Investments Commission – regulator of banks' dealings with consumers
Code	Code of Banking Practice
Code customers	Individual customers and small business customers of a signatory bank
Code Report	Independent Review of the Code of Banking Practice
EDR scheme	A dispute resolution scheme that is independent of signatory banks (such as that operated by FOS) that has the power to resolve complaints by Code customers about signatory bank decisions
FOS	Financial Ombudsman Service – the external dispute resolution service of which all signatory bank banks are currently a member
Mandate	The CCMC mandate set out in the Code of Banking Practice
OMI	Own Motion Inquiry – an investigation undertaken by the CCMC at its own behest
signatory banks	Banks that are members of the ABA and have chosen to become a signatory to the Code and thereby to become bound by the Code.



ATTACHMENT 4 – LIST OF RECOMMENDATIONS

No.	Code Review Recommendations re: CCMC
79	<p>The Code and the CCMC Mandate should be redrafted to make it clear that the primary focus of the CCMC should be its monitoring and public assurance – with the areas of greatest value-adding activity being:</p> <ul style="list-style-type: none">a) Taking a risk-based approach to prioritise investigative effort on systemic non-compliance (common problems, complaint and reported breach trends, etc);b) Transparency – providing industry and community with information demonstrating compliance with the Code and identifying trends and potential problem areas; andc) Supporting continuous improvement of banking practice by providing feedback on implementation, identifying and promoting good practice conduct and compliance, and identifying areas for new and strengthened Code provisions or industry guidelines.
80	<p>Promotion of awareness of the CCMC should be focused on points of advocacy, such as industry associations, consumer advocates and other lobby organisations. The purpose here is to provide assurance that the Code is being monitored and that the CCMC is being active in its role.</p>
81	<p>The CCMC should be renamed the “Banking Code Monitoring Panel”.</p>
82	<p>The CCMC Mandate should explicitly recognise the CCMC role in promoting transparency and trust in signatory banks’ compliance with the Code and embed a responsibility for publishing information about the effectiveness of and compliance with the Code, including statistics, results of inquiries, determinations and case studies as appropriate.</p>
83	<p>The Code should oblige signatory banks to be proactive in providing information to the CCMC including arranging regular engagement with their internal disputes resolution area and internal Customer Advocate.</p>
84	<p>The Code and the CCMC Mandate should explicitly set out its role and responsibility to proactively gather relevant information about the effectiveness of and compliance with the Code – including from sources external to the banks such as bank customers, Australian Small Business Ombudsman, consumer advocacy groups, financial counsellor networks, Legal Aid organisations, community legal centres, consumer affairs departments and other government regulators.</p>
85	<p>The Code and CCMC Mandate should make it clear that referrals from external dispute resolution schemes, the ABA, regulators, consumer or other stakeholder organisations will similarly be fed into CCMC priority setting, but will not</p>



necessarily be automatically investigated, however in each case, the CCMC will provide a written explanation of the reasons for any decision not to pursue a referred matter.

86 The Code should oblige signatory banks to report breach information as required by the CCMC on a quarterly basis.

87 CCMC should work towards an agreement with signatory banks' EDR schemes to establish an explicit responsibility for the scheme's Systemic Issues Team to refer to the CCMC any Code compliance issues the team identifies through its own work.

The arrangements should be set out in writing between the EDR scheme and CCMC.

88 The CCMC and signatory banks' EDR schemes should develop protocols for appropriate exchange of information and access to relevant EDR data, subject to safeguards that include:

- a) Explicit consent from EDR scheme complainants;
- b) Restricting access only to CCMC staff and authorised contractors;
- c) CCMC staff subject to the same audit and security controls as EDR staff; and
- d) EDR costs are met.

The arrangements should be set out in writing between the EDR scheme and CCMC.

89 The CCMC should adopt a risk-based approach to focus its effort, including:

- a) selecting which individual or small business reports of suspected breaches are formally investigated;
- b) where an individual or small business reports a suspected breach to CCMC and has not been to EDR, CCMC should refer them to the appropriate scheme; and
- c) selecting which referrals from other organisations it makes the subject of an own-motion-inquiry.

90 The Code, CCMC Mandate and CCMC communications material should adopt language that echoes the risk-based approach to be taken by the CCMC, including:

- a) that individuals that take their matter to CCMC are "reporting a suspected breach";
- b) that there should be clear information that CCMC will use this 'report' information to inform its risk assessments – but will only investigate selected individual matters; and



- c) that referrals from EDR, the ABA, regulators or consumer organisations will similarly be fed into CCMC priority setting, but will not necessarily be automatically investigated.

91 The Code, CCMC Mandate and CCMC communications material should adopt language that emphasises the difference between EDR and Code monitoring, including:

- a) language in the Code, Mandate and public information should eliminate reference to 'determinations' and any other EDR-like terms;
- b) reduce the degree of detail and specificity regarding investigations in the Code, allowing the CCMC to tailor the process used to the matter at hand.

92 The CCMC should be empowered to investigate breaches of the Code for up to two years after the individual or organisation reporting the suspected breach became aware of the events in question or reported the matter to a relevant EDR organisation.

93 The CCMC mandate should be redrafted along the lines recommended for the Code, in plain language and with a minimum of qualifiers and caveats.

94 The CCMC Panel should have a fourth member with small business and/or agribusiness skills and experience along with other relevant skills.

- a) This member should be appointed by the Chief Ombudsman of FOS and a consumer advocate member of the FOS Board, consulting with representative organisations from the small business and farming sectors.
- b) The Panel should have the option of sitting with 3 or 4 members depending on the matter being considered, however the Independent Chair of CCMC should have an additional casting vote to ensure against deadlock in a 4 person Panel.

95 The CCMC permanent staff mix should explicitly include strong data analytics skills.

96 The CCMC resourcing should allow for the ability to temporarily hire in specialist expertise for specific investigations or projects.

97 The CCMC should be explicitly tasked with progressively working with industry to develop the ability to publicly report on relevant signatory bank data and statistics, including acting as the trusted 'translator' of disparate bank information, producing equivalent information to enable broader reporting.

98 The Code should strengthen the powers of CCMC, including the ability to:

- a) require rectification or implementation of CCMC recommendations from own motion inquiries within a reasonable period of time (to be specified by the CCMC after consultation with the signatory bank);



- b) require corrective advertising and/or publication of information;
- c) require an independent compliance audit of the signatory bank's remediation actions; and
- d) suspend or terminate status as a signatory to the Code.

No.	CCMC Review Recommendations
A	The CCMC should broaden and deepen its sources of information about the effectiveness of and compliance with the Code including by obtaining regular reports from signatory banks' internal dispute resolution managers and Customer Advocates, by establishing arrangements with external dispute resolution schemes to be notified of systemic banking issues and by reaching out to customer advocacy organisations, small business representative organisations and regulators.
B	The CCMC should revisit its 3 year plan and set out a pathway towards its new role, including progressively strengthening resourcing, a risk-based plan for increasing the number of own-motion inquiries conducted in a year, and providing signatory banks with advance advice of information needs.
C	The CCMC should actively promote its own motion inquiry reports to interested stakeholder groups including the Australian Small Business and Family Enterprise Ombudsman, consumer advocacy groups, financial counsellor networks, Legal Aid organisations, community legal centres, consumer affairs departments and other government regulators. A media release should be issued about the results of each own motion inquiry report to encourage media to report the CCMC's work and develop public profile for its work in 'holding banks to account'.
D	The CCMC should use the discretion conferred on it by Mandate clause 6.3 to decide not to investigate a report alleging a Code breach unless this is an issue that the CCMC considers is relevant to its monitoring program. Instead the CCMC should use reports alleging a Code breach as one of many sources of information about potential Code compliance risk areas for signatory banks. Recognising that this would be a considerable change of approach, the CCMC would need to explain this new approach to stakeholders and undertake other preparatory work.
E	The CCMC should rethink its ACS and Annual Report with a view to collecting, analysing and presenting data in a way that is more meaningful. Whilst breach data should be included, this should not be such a dominant focus. Rather the aim should be to encourage best practice. The CCMC should issue a media release to encourage media to report the CCMC's work so that the Code is seen to be actively monitored.



- F The CCMC’s resourcing for next year and succeeding financial years should be sufficient to enable the CCMC to recruit a permanent staff member with strong data analytics skills and to hire in specialist expertise, for example, for ACS-related advice and own motion inquiries with a view to enhancing the insights in the CCMC’s public reporting.
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