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15 January 2024

Banking Code Consultation Team
Regulation & Supervision
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001
email: BankingCode@asic.gov.au

My feedback in this submission is based on past experience with a relevant professional industry body, direct employment within the banking industry and a background in education and training. To declare my interest, I am also a customer of three major Australian banks and a bank shareholder via my superannuation fund. I do not think those are competing interests, nor for banks if defined in terms of fairness as the Code requires, though it may be a question that arises for senior bank staff where remuneration is based on profit. I understand similar incentives for customer-facing staff have been removed.

COMMENTS

1. There has been limited time over the Christmas period to do justice to the task of providing feedback on proposed revisions to the Code. Time spent was worthwhile inasmuch as I had not been familiar with much of its detail or its potential to improve retail banking services or (in reference to **C25**) my entitlement as a customer to rely on it in certain circumstances. No doubt there are many more like me, despite an ABA assurance in response to BCOP recommendation 2 that awareness-raising is reflected in current banking practice.
2. In principle, the ABA acknowledges the Code needs to achieve a higher standard than the law stipulates. But the proposed Code has re-defined its standard so as to use language consistent with s912A(1)(a) of the Corporations Act and s47(1)(a) of the National Credit Act. Thus, 'fair, reasonable and ethical' (paragraph 10 of the current Code) are replaced with 'efficiently, honestly and fairly' (paragraph 5 of the proposed Code). In my opinion this change goes beyond semantics. Honesty is a standard required of us all by law (including bank customers it should be noted) but a Code of Practice should go further and rightly establish and enforce 'ethical' standards that are particularly apt within the banking and financial services sector. Ethics is unlikely to be legislated but really lies at the heart of the Hayne Royal Commission findings. Thereafter if not before, I strongly believe a customer is entitled to expect it to be foundational in a banking Code of Practice.

In response to C3; C6; C10; C11): I take issue with a change that would remove reference to ethical standards from the banking Code of Practice. To the extent possible I believe it should be an enforceable Code provision, and/or linked to a Banking Code of Ethics. A continuing commitment to fairness within the Code leaves open to question many examples of current banking practice. My own recent (relatively minor) experiences are listed in the attached appendix (**provided in confidence**).

3. In its approach, the cp373 document outlines how the ABA proposes revising/refining certain obligations of member banks to their customers without also supporting many independent review recommendations. As an average customer and member of the community, the standard I would hope the Code could achieve through self-regulation is to prevent unconscionable conduct that would otherwise require recourse to AFCA, the legal system or the powers of a Royal Commission for enforcement which are neither 'accessible' nor 'inclusive' avenues for average customers to pursue, particularly when experiencing financial 'hardship' or 'difficulty'.

It is doubtful that a revised introduction to the Code will suffice in meeting the first of the BCOP recommendations which the ABA supports, if adoption of others is minimal. Rather than proposing a revised Code to '*maintain the momentum coming from the Hayne Royal Commission*', in many respects the ABA advocates business as usual, or less than whole-hearted subscription to relevant recommendations.

Comment (C25): I hope ASIC provides further guidance to hold banks to the standards recommended and if not, considers granting conditional approval of the revised Code. I offer that opinion in relation to the following.

I am disappointed in the number of *independent* BCOP review recommendations (if reflected in the proposed revised Code) not supported for reasons that (a) do not pass the proverbial 'pub test' (recommendations 16, 62), (b) they are redundant by virtue of established regulation/legislation requirement, refer points below or (c) the ABA on banks' behalf believe the standard is already met which invites a question as to why the recommendation(s) were made. Confidence is a good thing, if it does not signal arrogance within an industry in need of cultural change.

Some important recommendations were not supported in principle, for reasons of duplication because they are already in legislation/regulations¹ or apply already². From a training perspective (pointedly highlighted in the BCOP recommendation 30, lightly touched on by ASIC and not supported by the ABA despite its central importance to Code implementation) finding the same information in different places is highly desirable in consolidating/reinforcing knowledge and makes compliance more likely. Training is not a separate activity but one which is ideally embedded in practice. By omitting information

¹ For example, cp373 clause (94); recommendations 62, 96, 97

² For example, recommendation 114

from the Code because it appears in legislation or regulatory guides might thereby be considered to permit a lower rather than higher standard of practice and/or relegate its importance, even to the extent staff may not be aware or if they are, consider themselves personally unaffected.

It does not help to instil confidence, competence and knowledge retention by staff in their professional banking practice to omit from the Code standards that banks are expected to uphold, whether or not they are legislated. It tends to obscure the standards for which the banks are institutionally and contractually responsible by pointing to legislated/regulated provisions where enforcement resides with others. In the Code every effort should be directed toward holding institutions to account for upholding standards that are also prescribed by law.

Comment (C24): Rather than reject recommendations of an independent review on grounds of duplication, I ask that ASIC invite the ABA to reconsider its position where that duplication in fact serves a useful and validating purpose.

4. It is difficult to understand why the ABA as the umbrella organisation representing its member institutions would not support a commitment to reasonable systems, processes and programs in place for an integrated approach to Code compliance³. At the same time as advocating self-regulation, the ABA does not support a commitment by its members to the primary mechanisms by which it can be demonstrably achieved. I draw a parallel with another professional body with which I am familiar that was responsible for industry credentialing. Much like higher education, strict rules applied by that body protected the integrity of the program and those who achieved it. Systems and processes were well-documented and sanctions applied with publicity given to breach incidents (though individuals were not named). Members subscribed to their professional association with that understanding of individual, institutional and industry ramifications and with confidence in the systems and processes that were crucial to maintaining them, rather than selecting only those that suited. It was in their "Code" and made for an effective self-regulatory mechanism for the benefit of all stakeholders. I don't see that level of accountability in the proposed Code. In banking, every individual and entity is a stakeholder and in compliance, it is not sufficient to rely on competitive pressure when a level playing field is required. I am not familiar with the ABA's relationship with its members but note its confidence in systems and processes being in place to ensure compliance without the need for the Code to express them and without wishing to require that commitment, or the recommended BCCC audit (reporting seen as sufficient). That is a significant assurance for the ABA to attest.

³ BCOP recommendations 8, 108

Comment (c10): In proposing a revised self-regulatory but contractually enforceable Code, the ABA did not support recommended BCCC audit or a commitment to reasonable compliance systems, processes and programs to assure it. In my opinion it is a weak link in the chain that invites further regulation if ASIC has a firmer view than the ABA about current systems, processes and programs based on the findings of the Hayne Royal Commission and feedback it receives now.

5. In terms of its limitations, a search through the Code is more than could be expected of any customer 'when things go wrong'. Aside from timeframes (which are helpful) a generic flyer directing customers elsewhere for assistance and referencing a raft of legislation, legal advice and/or external agencies is not as helpful as I expected for a Customer Guide to the Code of Practice. Might the ABA consider a different format in response to the BCOP Customer Guide recommendation⁴? An excerpt taken from clause 14 of the ASIC CP373 would make a simple, clear and more helpful introduction to a Customer Guide to the Banking Code of Practice than is currently proposed, in my opinion. That is:

Generally, consumers and guarantors protected under the Banking Code of Practice can take alleged breaches of the Code through their subscribing bank's internal dispute resolution process and, if dissatisfied with the outcome, to external dispute resolution by the Australian Financial Complaints Authority (AFCA).

Then, aligned with BCOP recommendations 9,11,27 (also not wholly supported by the ABA) in order to be 'consumer friendly' a customer would benefit from further clarity in knowing the grounds for complaint, and whether their experience amounts to a potential breach of the Code or not, to overcome an 'information is power' imbalance in favour of Banks. For example,

The Banking Code of Practice might assist you if you are:

- *a small business with a bank loan* <link to Code section & legislation >
- *a home loan customer* <link etc >
- *suffering financial difficulty, or need support to access banking services* <link etc >
- *have been appointed an Executor of a deceased Estate* <link etc >
- *a bank savings, cheque or deposit account customer* <link etc >
- *the victim of a scam or fraud* <link etc >
- *a customer who believes you have been unfairly treated by your Bank* <link etc >

Help is available <list avenues>

⁴ BCOP recommendation 4 (supported in part)

6. The proposed revised Code maintains a focus on banks as lender while standards in borrowing practices including the setting of interest rates by the major banks and their timing in the retail space also deserve attention from a consumer protection perspective.
7. I am glad the Code will remain under regular review and see merit in recommendation 10, in which industry guidelines are Code-related thereby enabling a process of *continuous* improvement. For example dealing with time differences across Australia present accessibility issues for those of us outside of a national head office. On the subject of independent review, the position of the ABA is a little unclear, being supportive of Recommendation 116, but not 115.

Comment: Now and in the future, banking services will increasingly rely on technology including 'reform' of our payments system, competitive disruption, intermediation, an economy and environment with new and ongoing risk exposures with as yet unknown outcomes. If the Code is intended to *provide flexibility to deal with changing and emerging trends in products and technology, and set a necessary standard for accessible and inclusive banking services*⁵ a three (3) review cycle seems appropriate as recommended⁶ with the potential to extend to a five (5) year cycle as the ABA prefers only if the Code was to incorporate Guiding Principles, Industry Guidelines and Protocols as per recommendation 10.

8. The Code of Practice is specifically intended for Banks and bank staff to engage with and follow. Responses of the ABA to BCOP recommendations (those not supported, or supported in part) largely reflect member banks' corporate interest rather than the interests of customers⁷ which is understandable though contrary to BCOP recommendation 2 (which was necessarily supported by the ABA but has yet to be demonstrated). ASIC will no doubt consider whether the Code achieves an appropriate balance.
9. Assertions are frequently made to the effect a certain generation of customers will resist internet banking – credence is not often given to their reasons: the lack of identifiable properly trained and customer-oriented support personnel as were invariably found in face-to-face settings with the ability to manage complex as well as relatively simple enquiries or resolve problems when they arose - no less necessary and perhaps even more so in an on-line environment. It seems unfortunate that problems too readily become complaints for a lack of connection with a staff member with the experience and authority to resolve them. Telephone contact from unnamed individuals and unknown mobile or 'private' numbers with generic responses does not deliver on the Code's 'customer focus' promise (refer attachment).

Most customers do not like to complain. Many do not have the time, especially if the process is seen as arduous and complicated. If there is a complaint, there must be a problem as well as a learning opportunity. If there is a problem, it requires a solution and

⁵ cp373 (clause 15)

⁶ BCOP recommendation 1 (supported)

⁷ For example, recommendation 108

someone willing and authorised by the bank to find one with particular reference to aforementioned Guiding Principles. If such a person with expertise and accountability can no longer be found at a bank branch, customers currently play pot luck navigating the banks' hierarchy before repeating the process via through an internal resolution process, then to an overloaded AFCA (as reported in relation to scams). Universal application of the Code should mean a consistency of approach across the system where individuals briefed on the problem can resolve it in the first instance at a regional if not local level, or wherever the problem arose, with escalation being a last, not the first resort.

It seems the pivot to technology-based banking has led to de-skilling rather than re-skilling or up-skilling of re-engineered 'customer-facing' roles. That is a shame for bankers at both a professional and personal development level, and for customers reliant on them.

Comment (and in response to C24): In response to BCOP recommendation 2 the ABA indicates it is current practice for senior leaders to make clear to their staff the Code's importance and its customer focus. In practice banks have distanced staff from customers in problem-solving and the complaint management process to which much of the Code relates, leaving them without authority or capacity to respond as problems arise. On that basis it will be no surprise if the Code is considered by staff to also be remote from their day-to-day practice of banking and those matters beyond their scope.

10. As laid bare by the Royal Commission, the good name of a bank and the duty and expertise of its personnel at senior levels as guardians of customers' financial wellbeing can no longer be relied upon. At a transactional level and in an on-line environment bank staff no longer 'know their client' and there are few opportunities for customers to 'get to know' their bank.

Perversely, scammers apply customer relationship management tools successfully to build trust in order to defraud customers, adding to the erosion of trust in the delivery of legitimate banking services on-line. AFCA complaint statistics highlight the issue and possible solutions appear to have received a lukewarm response from the ABA and a tendency by the banks to shift responsibility on to the shoulders of customers. The issue has received little attention or support in the revised Code.

Comment (also in response to C24): I note the ABA supports staff training in identifying scams⁸ which is positive (pre-emptively one would hope) but training to assist customers who are the victims of scams would be valuable. Anecdotally the path for those customers is unclear and the response from banks variable, at best. A dedicated telephone line under the Code of Practice to address some of these issues was recommended but unfortunately its inclusion in the Code was not supported by the ABA.

⁸ BCOP recommendation 113, 114

11. In a competitive banking environment, different banks differentiate between different customer segments with different account offerings regularly emerging, including with respect to fees charged and interest earned/charged. Under the Code, customers should expect to be guided by their bank to a cost effective and appropriate choice of account/product for their circumstances. It is not clear how the Code might underpin this as it would represent a re-imagining of bank service delivery requiring resourcing/training and effective execution strategies outside of a branch setting that presents a range of challenges including privacy as the ABA points out, likely too burdensome for inclusion in the Code. Greater clarity in the Customer Guide would be welcome, if it gives customers agency in the process via customer-initiated enquiries leading to account transitioning.

Comment C25: If proposing in the Code that banks engage in pro-active identification and account transitioning for customers who would benefit, it is worthy of inclusion in their Customer Guide.

Thank you for the opportunity to comment.

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Attachment (in confidence)

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