

ANNUAL REPORT — MAY 2023

BNPL Code Compliance Committee Annual Report on Self-Regulation

02

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Chair's Overview

Key points:

- > As at March 2023, the BNPL Code had 7 members, representing around 90% of active BNPL accounts in Australia
- > The CCC met 5 times during the year
- > One new Code member was accredited
- > One Code member resigned due to a change in business activities
- > The CCC suspended a Code member following appointment of receivers
- > The CCC received and assessed 17 reports about alleged breaches of the Code

The Buy Now Pay Later Code Compliance Committee (CCC) is pleased to present this annual report about self-regulation under the [AFIA Buy Now Pay Later Code of Practice](#) (the Code) which came into effect on 1 March 2021.

This is our second report and relates to the period 1 March 2022 to 28 February 2023.

Buy Now Pay Later (BNPL) is a shorter term product or service for the purchase of goods or services sold to consumers where the consumer repays the purchase in instalments. Consumers are informed by the BNPL provider of the repayment amounts and payment schedule and will pay no interest charges for individual purchases if they pay within a specified period.

Size of the Sector

BNPL continues to be popular with both consumers and merchants as a means of payment. According to the Reserve Bank of Australia (RBA), BNPL transactions grew by approximately 37 percent in financial year 2021-22 measured by value, to around \$16 billion which is equivalent to around two percent of all Australian debit and credit card payments.¹ Data provided to the CCC by the Code members shows transactions worth \$15.3 billion took place in financial year 2021-22 compared to transactions worth \$11.9 billion in financial year 2020-21, which equates to a 29 percent increase.

Since it commenced operation, the CCC has accredited nine BNPL providers as members of the Code. The Code members as at the date of this report are Afterpay, Brighte, humm BNPL, Klarna, Payright, Plenti and ZipPay. LatitudePay and Openpay ceased to be members of the Code in February 2023. More information about this is set out in section 7.

According to the RBA, the total number of active BNPL accounts in Australia increased from 5 million the previous year to around 7 million as at 30 June 2022². This figure does not reflect the total number of BNPL customers as some have accounts with more than

¹ Reserve Bank of Australia (2022) *Payments System Board Annual Report 2022*, page 18

² Ibid

one provider. Data provided to the CCC by the Code members shows that 6.3 million of those 7 million active accounts were held with Code members as at 30 June 2022. This means that approximately 90 percent of active BNPL accounts in Australia are protected by the high industry standards and consumer safeguards in the Code.

Dispute Resolution and Reports to the CCC

The Code members are committed to maintaining high standards of fairness and honesty in their interactions with customers. The CCC strongly encourages, and has encouraged since March 2021, all firms that provide BNPL products and services as defined in the Code to become Code members³ to demonstrate their commitment to consumer protection and fairness, benefit from the substantial value of industry self-regulation and ensure they are operating their business in accordance with industry best practice.

As with all industry codes of practice, compliance and enforcement are key elements. The CCC expects that Code members will respond quickly and proactively to customer concerns when things go wrong.

Under the Code protocol, customers can raise any concerns about their dealings with Code members firstly through the provider's internal dispute resolution (IDR) processes, and then through external dispute resolution (EDR) such as the Australian Financial Complaints Authority, of which all Code signatories are required to be members.

Customers can also report alleged breaches of the Code to the CCC.

Code members report quarterly to the CCC about IDR and EDR complaints. Members also report about business metrics, although some of this data is delayed due to its market sensitive nature and the disclosure obligations of members who are listed companies. As at the end of December 2022 (the most recent reporting period for the delayed data) the number of IDR and EDR complaints per 1000 customers that Code members received on an aggregated basis was low, relative to the number of active BNPL accounts and the number of BNPL transactions, and compared to other forms of payment. The CCC has observed this trend since Code members commenced quarterly reporting in July 2021.

Seventeen customers (or their representatives) contacted the CCC about alleged breaches of the Code during the period to which this report relates. This is in the context of a total of approximately 110 million BNPL transactions that took place during this period.⁴ Of the seventeen reports received by the CCC, most were complaints about the operation of the customer's account or their interactions with customer service at the BNPL provider, and the majority of these were already in the BNPL provider's IDR process. In these cases, the aim of the CCC is to ensure the Code member provides the customer with an appropriate resolution of the matter.

³ Providers must be AFIA members to be eligible to join the Code

⁴ Reserve Bank of Australia (2022) *Payments System Board Annual Report 2022*, page 19

One of these reports required further investigation. See section 9.3 for further information.

The CCC welcomes reports from customers and their representatives where they consider there have been breaches of the Code. In the coming year, the CCC will consider what further guidance it can provide about the circumstances in which systemic issues or other serious non-compliance is likely to be investigated under the CCC's ToR.

Further information about matters reported to the CCC is set out in section 9.

Engagement with Industry, Consumer Groups and Regulators

During the year, the CCC has liaised with consumer groups, industry and regulators, including ASIC and ACCC, to promote the Code and ensure it continues to meet the expectations of external stakeholders. We will continue to build these key relationships in the coming year.

The CCC also actively participated in the Government's consultation on options for future regulation of the BNPL sector. It also engaged with Promontory as the independent reviewer of the BNPL Code. Promontory's report, which is available on AFIA's website, was released after the period to which this annual report relates, and the findings that are relevant to oversight of compliance with the Code will be addressed in the CCC's next annual report.

The Year Ahead

The BNPL sector in Australia continues to evolve and consolidate, with new providers entering the market, including major banks and global institutions. Economic conditions and competition have driven operational efficiencies and will continue to be key in delivering innovative services for BNPL customers and merchants.

Most significantly, the Government has announced its intention to introduce a new legislative regime for the sector.

Going forward, the CCC will continue to work with Government and to report annually to the community about its work to ensure that Code members provide high standards of service for customers and best build practices across the industry. In particular, in this coming year the CCC will heighten its focus on how Code members ensure good outcomes for customers through their commitments in the Code to assist vulnerable people and those who find themselves in financial difficulty.

The CCC also anticipates a significant program of work as AFIA and its members respond to the findings of the independent review of the Code by Promontory.

More information about becoming a Code member is available on AFIA's website or by contacting the Code Administrator at codes@afia.asn.au.

Consumers can also easily identify Code compliant members by checking the AFIA website, or simply looking for the BNPL Code compliant tick of approval. These are the firms who have made a commitment to industry best practice and consumer protection, and we urge customers to seek this out when they are considering using a BNPL service.

Finally, I would also like to place on record my thanks to the other members of the CCC, and Code secretariat manager Tracey Lyons, for their work throughout the year.

A handwritten signature in black ink, appearing to read 'M Schaper'.

Dr Michael Schaper
Chair, BNPL Code Compliance Committee

1. About the Code

The Code, the first of its type in the world, sets best practice standards for the sector and strengthens consumer protections. It does this while extending customer choice for how to make purchases and payments in a way that suits their needs and preferences.

The Code is operated by the Australian Finance Industry Association (AFIA). AFIA believes that trust and integrity are the cornerstone of a sustainable finance industry and works together with members to develop industry standards and codes of practice to improve transparency, fairness and customer confidence. These practices assist members to meet community standards and their legal obligations, strengthens trust and good standing of the finance industry amongst stakeholders as well as lift practices for a better future for finance.

Strengthening consumer protections across the sector is a focus for AFIA and its BNPL members. The Code is explicitly consumer focused and has nine commitments that signatories make directly to the people that use their products and services.

2. Meet the Code Compliance Committee

The CCC is an independent committee (appointed by the Board of AFIA) and is responsible for the administration and enforcement of the Code. As part of its role in administering the Code, the CCC monitors and investigates compliance by Code compliant members and can impose sanctions for non-compliance.

The CCC is comprised of experienced professionals with legal, consumer and industry backgrounds. The role of the Chair is critical to ensuring that oversight of the Code is administered in a fair, reasonable, independent and effective way. As another means to ensure independence, the CCC's consumer representative was nominated and appointed through the Consumers' Federation of Australia.



Dr Michael Schaper, Chair

Dr Schaper has extensive leadership and governance experience across business, government, industry and professional associations, and academia. He was formerly the Deputy Chairperson of the Australian Competition and Consumer Commission for ten years (2008-18), focusing on industry codes, small business, franchising, and industry associations. Prior to that, he also served as the Small Business Commissioner for the ACT and President of the Small Enterprise Association of Australia and New Zealand. Michael's current board roles include co-chair of the Australian Taxation Office's Shadow Economy Advisory Forum; member

of the University of Canberra governing council; and member of the national board of the Australian Institute of Company Directors.



Jillian Brewer, CCC Member

Jillian Brewer is an experienced lawyer, conciliator, investigator and trainer, with more than 20 years in alternative dispute resolution. Jillian has held senior roles with industry ombudsman schemes in banking and telecommunications. She has also worked in compliance roles at NAB and as a solicitor in private practice and government. Jillian's career in the financial services industry, and particularly financial services, gives her valuable experience as a consumer advocate with insight into consumers' perspectives, experiences and needs.



Craig Pudig, CCC Member

Craig Pudig has been a lawyer for more than 35 years, with his experience spanning the finance industry to large infrastructure and construction projects both in Australia and overseas. In 2008, Craig joined Macquarie in a business role (working in Macquarie Capital) and four years later, was appointed the global head of disputes and litigation. Prior to joining Macquarie, Craig was the Managing Partner of Clayton Utz Sydney for seven years. He has held a number of other board and advisory roles. Craig has experience in dispute avoidance and resolution and an understanding of the commercial law involved in the financial services industry.

The CCC maintains a conflict of interest register to disclose and record other roles held by, and business activities of, CCC members. A CCC member cannot, within the previous 12 months:

- (a) be, or have been a member of the AFIA Board;
- (b) be or have been an employee or officer of a code compliant member; or
- (c) have worked in the buy now pay later sector of the financial services industry in Australia.

3. The Role of the CCC

The establishment and operation of the CCC is governed by [the Buy Now Pay Later Terms of Reference \(ToR\)](#) and the [Buy Now Pay Later By Laws \(By Laws\)](#). Under the ToR, the CCC is an independent committee established to administer and enforce compliance with the Code by Code members. The CCC's guiding principles include that it will:

- act in a fair and effective manner with integrity and impartiality
- be transparent and accountable
- communicate with stakeholders and provide findings in AFIA's annual review and six-monthly report
- promote the Code and its work.

The CCC has access to relevant information and documents to carry out its tasks and can seek additional information and explanations from Code members as it considers appropriate in the circumstances.

The CCC's functions and responsibilities include the following:

- (a) consider applications to become Code members
- (b) establish and maintain an up-to-date register of Code members
- (c) receive information and compliance reports from Code members, to enable the CCC to monitor and report on each Code member's adherence to the Code to standards determined by the CCC from time to time
- (d) receive reports of alleged breaches of the Code
- (e) investigate such reports that fall within its powers to do so
- (f) make determinations in relation to alleged breaches investigated by it
- (g) recommend action to remedy a breach, alleged breach or potential breach of the Code, taking into account any measures related to any such breach that have been agreed with or imposed on a Code member by any regulatory body
- (h) oversee and monitor the implementation of any recommendation or any agreed measures imposed by it
- (i) impose, at its discretion, sanctions for a breach of the Code that is not corrected by the Code member, and
- (j) exercise and perform such other acts as may be provided for from time to time in the By-Laws and or Code or which are incidental to any of the above functions and responsibilities.

4. Governance

During the period to which this report relates, the CCC held five meetings and each committee member attended all meetings. In addition to the scheduled meetings, there is regular communication between CCC members and with the Code Administrator about committee business and matters related to the Code and the BNPL industry.

5. Joining the Code

One of the key roles of the CCC is to examine applications by AFIA members who are BNPL providers to become code compliant.

As part of the accreditation process prospective signatories are required to demonstrate how they will meet the key commitments set out in the Code. This includes having relevant policies, procedures and other resources in place to satisfy the requirements of the Code, ensuring that staff are properly trained to enable the provider to meet its obligations under the Code, and ensuring that providers have minimum standards in place for their merchant and retail partners. The CCC also requires evidence of probity checks for officers of the company.

The CCC conducts a comprehensive review of applications for accreditation, assisted by the Code Administrator and external advisers as required. The CCC will discuss the application with the prospective signatory and seek any additional information that it requires in support of the application. If the CCC is satisfied with the information provided, it will accredit the applicant as a Code member.

In order to maintain its accredited status, a Code member must provide quarterly data to the CCC including information about business activities, internal dispute resolution (IDR) and external dispute resolution (EDR) matters, and assistance to customers in financial hardship. The CCC reviews this data as part of its ongoing monitoring of compliance with the Code and seeks further explanation and information from members as required.

Plenti Pty Limited ABN 29 161 376 638 was accredited as a new Code member by the CCC effective 29 June 2022.

6. How Do Code Members Stay Accredited?

Each year after initial accreditation, Code members must provide an attestation in accordance with the By Laws about their compliance with the Code, in such form as the CCC may require from time to time. The attestation must include a certification by a director or other appropriately authorised person that the Code member continues to comply with its obligations under the Code.

If any of the policies, procedures or other resources in place to satisfy the requirements of the Code have changed during the period since accreditation, the Code member must provide information about the changes for the CCC's review. The CCC will take this and any other information it considers relevant into account in deciding whether to confirm the continuing accreditation of a Code member.

In the case of the BNPL Code, re-accreditation must take place prior to the end of February each year, and accreditation remains valid for the period 1 March to the end of February the following year.

In February 2023, the CCC confirmed the continuing accreditation for the period 1 March 2023 to 29 February 2024 of all Code members who provided their annual attestations in accordance with By Law 6.5.

In its review of the information provided as part of the annual attestation process for this year, the CCC considered several issues related to compliance with the Code and in some cases required members to take additional steps to ensure they remain compliant going forward.

Some of those issues included:

- improved access to information about hardship and financial assistance on a BNPL provider's website⁵
- ensuring that Code members make the Code available on their website and/or digital platforms and clearly display the accreditation symbol (the "Code tick")⁶
- amendments to account terms and conditions to further clarify how fee cap limits and fee set off rights operate.

7. Cessation of Code Membership

During the year 1 March 2022 to 28 February 2023, two BNPL providers ceased to be members of the Code.

7.1 LatitudePay Australia Pty Limited ABN 26 633 528 873

In accordance with Clause 11.1 of the AFIA Buy Now Pay Later Providers [By Laws](#), LatitudePay notified the CCC of its resignation as a Code compliant member effective 24 February 2023 due to the dis-continuation of its BNPL business.

The CCC will continue to accept any reports of alleged breaches of the Code that relate to the period while LatitudePay was a Code member.

7.2 Openpay Pty Ltd (Receivers and Managers Appointed) ABN 20 159 699 126

McGrath Nicol was appointed as receivers and managers to Openpay on 4 February 2023. Consequently, Openpay did not provide a valid annual attestation about its compliance with the Code in the timeframe required by the CCC.

Based on the information available to it at the time, the CCC took the view that failure to lodge a valid annual attestation about compliance with the Code in accordance with By Law 6.5, along with the uncertainty about the continuation of the business and Openpay's capacity to comply with the requirements of the Code in practice, were sufficient grounds

⁵ See clause 14 of the Buy Now Pay Later Code of Practice

⁶ See clause 16 of the Buy Now Pay Later Code of Practice

for the CCC, acting reasonably, to determine that it was appropriate to suspend Openpay’s certification as a Code compliant member in accordance with By Law 7.2(a).

McGrath Nicol was advised of this decision in writing on 24 February 2023.

Openpay subsequently ceased to be a member of AFIA effective 18 April 2023 and is therefore no longer eligible to be a member of the Code.

The CCC will continue to accept any reports of alleged breaches of the Code that relate to the period while Openpay was a Code member.

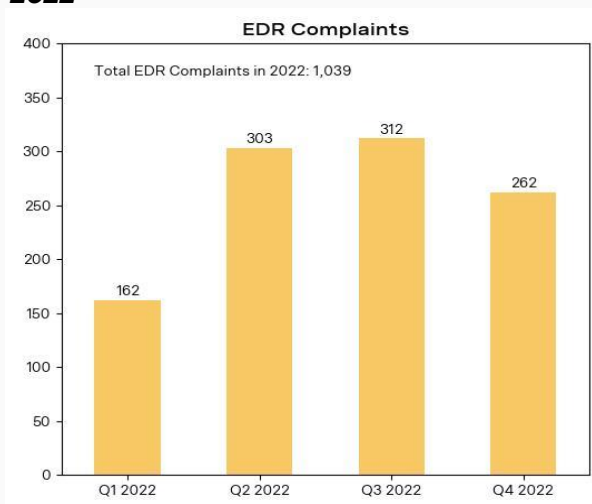
8. Code Monitoring and Oversight

8.1 Internal and External Dispute Resolution Data

Code members are required to provide data each quarter to the CCC about IDR and EDR matters. Complaints data is a key tool to help the CCC monitor how well Code members are meeting their key commitments under the Code. The CCC gives careful attention to the number of complaints that members receive and how quickly these matters are resolved.

Members also report to the CCC about business metrics although some of this data is delayed due to its market sensitive nature and the disclosure obligations of members who are listed companies.

GRAPH A – Aggregated EDR complaints about BNPL Code members for the 12 months to December 2022



Source: Australian Finance Industry Association members

Graph A, which has been prepared based on data reported to the CCC by members, shows the aggregated rate of EDR complaints for each of the quarters in calendar year 2022. The EDR complaints data is checked against publicly available information from the Australian Financial Complaints Authority data cube.

Overall, the rate of EDR complaints per customer remains low, having increased marginally from 0.03 complaints per 1000 customers in the first quarter of 2022 to 0.05 complaints per 1000 customers at the end of the third quarter 2022 (which is the latest available data about customer numbers). The CCC will continue to carefully monitor complaints data and will raise queries with members as needed about their IDR and EDR processes and any trends in complaints that emerge in relation to the subject matter or the time taken to resolve complaints, or any other issue.

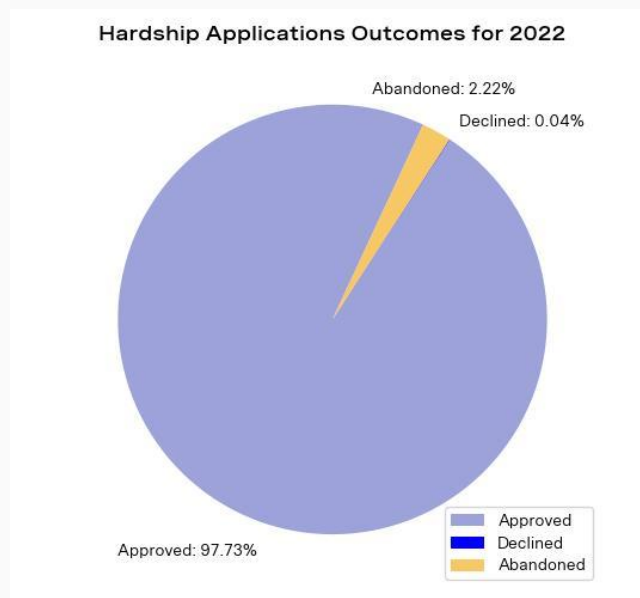
8.2 Financial Hardship Assistance Data

Under Clause 14 of the BNPL Code, Code members have committed to offering hardship assistance to customers who are experiencing financial difficulty. As part of this commitment, Code members are required to respond to requests for assistance within specified timeframes, and to work with a representative (such as, a family member or friend, a financial or legal representative, or a financial counsellor) if the customer prefers.

Code members also commit to freezing late fees and collection activity, and not listing a default on a customer’s credit file while a hardship request is being considered.

As part of its oversight and monitoring functions, the CCC requires Code members to report quarterly about how they are responding to requests for hardship assistance.

Graph B – Hardship assistance requests approved, declined or abandoned for the 12 months to December 2022



Source: Australian Finance Industry Association members

Code members approved almost 98% of requests for financial hardship assistance. This can take a number of forms depending on the customer’s circumstances including delay

or deferral of repayments, entering a repayment plan so that customers can make smaller repayments over an agreed period without incurring additional burden, deferral or cancellation of late fees and in some cases, a waiver of the customer's debt.

Just over 2% of hardship assistance requests were abandoned, which means that the customer decided not to proceed with the request or did not respond to an offer of assistance made by the BNPL provider. Only 0.04% of requests for hardship assistance were declined.

While there were instances of delays in providing responses within the specified timeframes identified in the data reported by Code members, overall Code members continue to be highly responsive to customers who tell their provider that they are experiencing financial difficulty.

9. Alleged Breaches of the Code

9.1 The CCC's Powers to Investigate Alleged Breaches of the Code

Under clause 10.1 of the ToR the CCC may commence an investigation of Code compliance:

- (a) in response to an allegation from any person that a Code member has, or may have, breached the Code;
- (b) in response to a referral or report from an external stakeholder that a Code member has, or may have, breached the Code;
- (c) in response to an allegation raised by an existing Code member that a Code member may be guilty of conduct which is unbecoming of a member of AFIA and/or the BNPL group of members or prejudicial to the interests of AFIA and/or the BNPL group of members or otherwise has failed to comply with its obligations under AFIA's Constitution; or
- (d) as an outcome of the CCC's monitoring process, if the CCC has reason to suspect that a Code member may have breached the Code (including in circumstances where a Code member has self-identified a breach or potential breach).

Under clause 10.2 of the ToR, the CCC must not consider an alleged breach in any of the following circumstances:

- (a) where the person complaining of the alleged breach (or another person acting on their behalf) is also seeking compensation or other redress for loss or detriment allegedly suffered by them arising from substantially the same facts. In these situations, the alleged breach must be referred to the Code member's internal dispute resolution and/or external dispute resolution schemes; or
- (b) where an alleged breach is also the subject of a dispute under an EDR or conciliation scheme or the subject of an investigation by any regulatory body. In these situations, the CCC must await the final determination or findings under the relevant dispute

resolution or conciliation scheme or of the relevant regulatory body before commencing any investigation. In this situation, on completion of the proceedings under the relevant dispute resolution or conciliation scheme, the CCC can consider whether to undertake its own investigation of the alleged dispute and whether or not it will have regard to any determination made in relation to such dispute resolution or conciliation scheme.

9.2 Reports of Alleged Breaches Received During the Period

During the period 1 March 2022 to 28 February 2023, the CCC received seventeen reports under ToR 10.1(a) that a Code member has, or may have, breached the Code.

Of these seventeen reports, three were out of scope. One related to a product that is not a BNPL product or service under the Code⁷, and two related to events before the Code existed (the BNPL accounts in these cases were opened in 2018 and 2020, respectively).

Of the fourteen remaining reports:

- One related to identity theft, where the victim contacted the CCC because he had been approached by debt collectors in relation to a BNPL debt that he knew nothing about. The Code member worked with the victim to resolve the issue quickly. It was determined the account was opened fraudulently and the victim was not liable for the debt.
- One was an enquiry about how BNPL accounts operate. The Code Administrator provided information to the person and no further action was required.
- Eight related to complaints about the operation of the customer's account, and customer service or account administration issues which are more appropriately handled by the BNPL provider to obtain a quick resolution for the customer. As the majority of these matters were already in the Code member's IDR process they could not be investigated by the CCC in accordance with ToR 10.2(a).
- A financial counselling organisation contacted the CCC on behalf of a client who held three separate BNPL accounts and so this was counted as three reports. The financial counselling organisation was already engaged with the three Code members, seeking waivers of the customer's debts on compassionate grounds. In each case, the debt was waived by the Code member and the customer's account was closed.

All of these matters were registered and reported to the CCC for its review. The CCC monitors the types of issues that customers are reporting and the volume of matters that relate to each Code member as part of its broader oversight of Code compliance.

⁷ The product was issued under an Australian Credit Licence

9.3 Investigations by the CCC

The CCC investigated one report of an alleged breach of the Code under ToR 10.1(a) during the period.

A financial counselling organisation contacted the CCC about its dealings with a Code member on behalf of its client after the matter was resolved with the Code member. The financial counselling organisation was concerned that the manner in which the Code member dealt with it and its client did not align with commitments in the Code.

The CCC requested a range of information from the Code member and invited the financial counselling organisation to provide any additional information that it felt was relevant to the CCC's review of the matter.

In this case, the CCC was satisfied with the actions taken by the Code member and determined that no further action was required as:

- (a) the Code member did not dispute the events as described in the breach report
- (b) the Code member acknowledged to the CCC that the customer experience was not in line with the Code member's expectations of its staff or internal processes, and had taken actions to address this, including re-training of agents on complaint handling processes, implementation of additional controls to track the provision of documents to customers and third parties, updating of financial hardship procedures, and new guidance on the provision of documentation to customers including what documents can be provided and the timeframes for this to occur.

In accordance with its protocol, the CCC provided a written determination about the investigation of the alleged breach to the person who made the report and to the Code member, setting out the reasons for the CCC's decision.

The CCC expects that all Code members have appropriate arrangements in place in their internal dispute resolution and financial hardship procedures to accept representations from third parties who are properly authorised to act on behalf of a customer, and that the same expectations about high standards of service apply to any dealings with those third parties.

The CCC did not commence any investigations under ToR 10.1(b), (c) or (d) during the period as it did not receive a referral or report from an external stakeholder, did not receive any allegation from another Code member, and did not have reason to suspect a member had breached the Code as a result of the CCC's monitoring processes.