

# AFCA's Approach to Code obligations for credit providers

## How does AFCA deal with various Code obligations for credit providers?

Under Rule A.14.2, AFCA must do what it considers to be fair in all the circumstances having regard to a number of factors, including applicable industry codes and good industry practice.

Credit providers may be subscribers to various industry codes (Codes) including, the:

- Banking Code of Practice
- Customer Owned Banking Code of Practice
- Online Small Business Lenders Code of Practice
- Insurance Premium Funding Lenders Code

The Codes are generally voluntary codes of practice that credit providers may choose to adopt in addition to their obligations at law and under statute. Membership of certain Industry Associations may, however, require members to subscribe to that Association's relevant Code of Practice.

The Codes have a number of important differences. AFCA considers that if a financial firm adopts a Code, then it should comply with the provisions of that Code. In deciding complaints, AFCA will have regard to the version of the relevant Code adopted by the credit provider that applied at the time of the event in question.

Where a credit provider does not comply with the Code to which it is a subscriber, then the financial firm is likely to have breached its obligations to its customer in addition to any other breach.

## How does this apply to non-subscribers to a Code?

Where a credit provider is not a signatory to a Code, AFCA recognises that firm has not adopted its provisions. Accordingly, AFCA does not expect that a firm will always strictly comply with all provisions of Codes to which it does not subscribe, particularly where the provisions are of a technical nature.

However, AFCA may nevertheless have regard to the relevant provisions of any Code in accordance with Rule A.14.2 if relevant. This will depend on the specific circumstances of each complaint on a case by case basis, including the type of facility, financial firm and conduct in question. AFCA will assess whether the Code is an 'applicable industry code' and may assess whether the standard in the Code represents the general law or 'good industry practice'.

Accordingly, AFCA may have regard to a standard set out in a Code if AFCA considers the standard represented the general law or good industry practice at the time the conduct occurred, even if a credit provider is not a subscriber.