

13 December 2007

Mr Michael Funston  
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Dear Michael

**Re consultation on the Draft Code of Practice**

Thank you for the opportunity to make a submission in regard to the above Code. I congratulate you on the effort that has clearly been made and appreciate your visit to this office to discuss the Code.

My comments are in the attached document but please feel free to contact Kris or me if we can be of further assistance.

Yours sincerely

Jan Taylor  
**FCDRS Ombudsman**

**Enc.**

## Comments on the Draft Abacus Code of Practice

### Section 5

#### Responsible lending practices

##### *Reference*

*(5.3) If we issue a credit card or other revolving credit facility, we will act responsibly in setting and increasing the amount of credit we make available to you. We will not send you an unsolicited offer to increase your credit limit if you have a recent poor repayment history or regularly make only minimum monthly repayments on the facility.*

*(5.4) We will ensure any unsolicited offer to increase your credit limit on a credit card or other revolving credit facility that we issue includes information on:*

- The new minimum payment required*
- Options for lowering existing or new credit limits, and*
- Rejecting the offer if you are currently having difficulties meeting your repayments, or your financial circumstances are likely to deteriorate in the near future.*

##### Comment

In regard to the rejection of the offer, I believe the default procedure on any unsolicited offer should be that consumers are not required to take any action in order for the offer to be deemed unwanted. Should they wish to discuss the offer further then **they** must make an effort to do so. This means consumers have to take some proactive measure e.g. in completing documents and returning them to the financial services provider (FSP) to enable the increase to be assessed by the FSP.

### Section 9

#### Safeguards for loan guarantors

##### *Reference*

##### *Ongoing Information*

*(9.12) after entering into a guarantee agreement with you, we will send you a copy of:*

- Any formal demand or default notice that we send to the borrower, and*
- If you ask us, a copy of the latest statement of account (if any) provided to the borrower.*

##### Comment

I do not believe that it is adequate for potential loan guarantors to have to request statements relevant to the account for which they become liable if the borrower defaults. Ongoing information should include the provision of regular statements of account, the same as provided to the borrower. This ensures loan guarantors are aware of the status of the loan at any time so they do not have to wait until they receive a copy of a default notice or formal demand to realise their guarantee may be at risk.

## **Section 22**

### **If you are in financial difficulties**

#### *Reference*

*(22.1) We will work with you in a constructive way if you experience genuine difficulties meeting your financial commitments to us. With your agreement and commitment, we will try to assist you to overcome those difficulties. We will do this whether or not you have a right to seek hardship variation under the consumer credit laws*

*(22.2) We will have procedures in place to ensure we:*

- Respond promptly to any request or application made to us. (We may also initiate contact to discuss your financial situation)*
- Genuinely consider your request or application, taking account of your situation. However, we will only be able to do this if you provide us with the financial information and documents we may reasonably need to assess your situation for ourselves*
- Encourage you to keep making what payments you can while we are considering your request*
- Consider longer term as well as short-term financial issues when they are relevant. If you are experiencing longer term difficulties we will try to develop an appropriate solution with you to allow you to meet your obligations*
- Not have your default listed on your credit file while we are considering your application request*
- Propose realistic alternative arrangements (where possible) if we are unable to agree to your application request*
- If we agree on a plan to assist you, summarise this in a letter to you*
- If we are unable to assist you, advise you promptly in writing. We will also advise you of any rights you may have to seek a change on grounds of hardship under the consumer credit laws, and*
- Refer you to a Financial Counselling or similar service in appropriate cases (subject to availability).*

#### Comment

Because section 68 refers to “the Court” in the UCCC some FSPs have said this gives an exclusive jurisdiction to courts to consider section 66 cases that arise. The FCDRS, like other EDR schemes, is an alternative to the courts, and court proceedings. Consumers have the right to bring complaints such as under valued sales in a mortgage-in-possession situation to their EDR scheme. These scenarios are also covered and referred to as applications to “the Court” in sections 71 and 98 respectively of the *Consumer Credit Code*. Therefore, it follows EDR schemes such as the FCDRS are able to review decisions made by FSPs in rejecting an application for a hardship variation where the consumer believes the decision is neither fair nor reasonable.

Where the FSP, under the UCCC, is advising the consumer in writing of its inability to assist with a request for hardship assistance under the Code, the correspondence should also give details of the external scheme to which the FSP belongs.