



2 September 2016

Mr Phil Khoury
Cameron Ralph Navigator
PO Box 307
EAST MELBOURNE VIC 8002
By Email phil@cameronralph.com.au

Dear Mr Khoury,

Code Review 2016

Bank Victims would like to thank you and the Australian Bankers Association for undertaking this important review.

I have attached a copy of Bank Victims Submission 80, filed on 19 August 2015 with *The Parliamentary Joint Committee on Corporations and Financial Services inquiry into impairment of customer loans*. I would like your review to consider the allegations in this submission.

The submission states:

“Under bank contracts, small businesses, farmers and individual customers have the right to refer code breaches to the CCMC. [However, there is evidence that the]... ABA, FOS and subscribing banks directed customers to other forums. The constitution of the CCMC, in clauses 2.1 (Definitions) and 8 (Complaints about Code breaches), explains that bank customers forego rights to have code breaches investigated by the CCMC if [customers] attend mediation or refer disputes to the FOS.”

“The lack of transparency, independence and integrity of the ABA, CCMC, FOS, and the banks resulted in customers being unable to have code breaches investigated by the CCMC. By doing this, customers have no rights to defend themselves other than resolving disputes in the courts.”

These allegations suggest that the banks have engineered arrangements whereby they could avoid complying with the practices that received widespread public support in 1993.

My submission includes a copy of 'Submission 80 - Attachment 1' that states:

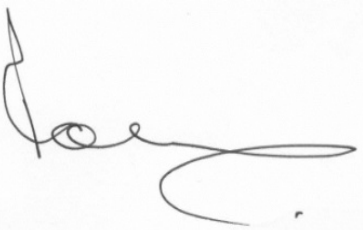
"To summarise, there is evidence that the banks and FOS continued to appoint CCMC members bound by a hidden constitution ... In light of these facts, it appears the FOS and code subscribing banks acted deceptively and dishonestly, to cause financial disadvantage to bank customers."

The attachment was sent to senior members of Treasury, which have responsibilities to ensure that the banking and financial systems are operated lawfully. Treasury did not reply to the submission or the attachment.

Bank Victims has received comments from a considerable number of people, all suggesting that the banking regulators have not been operating affectively for the benefit of the banks customers.

Please confirm receipt of this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Russell Cousins', with a long horizontal flourish extending to the right.

Russell Cousins
Director, Bank Victims Pty Ltd
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BROADBEACH QLD 4218
Email: Office@bankvictims.com.au

Russell Cousins
Bank Victims Pty Ltd
P.O. Box 486
Maryborough QLD 4650

19 August 2015

The Secretary
Parliamentary Joint Committee on
Corporations and Financial Services

Dear Sir/ Madam,

RE: Parliamentary Joint Committee on Corporations and Financial Services inquiry into impairment of customer loans

The Australian Bankers' Association (ABA), the Code Compliance Monitoring Committee (CCMC), Financial Ombudsman Service (FOS) and code subscribing banks have had an arrangement that impairs loans by recommending or insisting customers use mediation or the FOS. None of these parties advised customers that they would surrender rights under the code if they attended other forums.

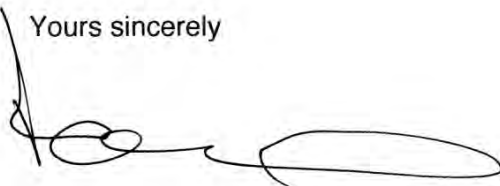
Under bank contracts, small businesses, farmers and individual customers have the right to refer code breaches to the CCMC. The ABA, FOS and subscribing banks directed customers to other forums. The constitution of the CCMC, in clauses 2.1 (Definitions) and 8 (Complaints about Code breaches), explains that bank customers forego rights to have code breaches investigated by the CCMC if they attend mediation or refer disputes to the FOS. However, until recently the constitution of the CCMC was not available to bank customers.

The lack of transparency, independence and integrity of the ABA, CCMC, FOS, and the banks resulted in customers being unable to have code breaches investigated by the CCMC. By doing this, customers have no rights to defend themselves other than resolving disputes in the courts. The Modified Code of Banking Practice was introduced in 2004 to ensure that court action was not relied on by the major banks.

The banks' customers unwittingly surrender the rights they have under the code to have breaches investigated by the CCMC. Banks could therefore avoid having to be named and shamed by the CCMC or having to rectify code breaches. Bank Victims has written to MP's (attached) and explained how the banks introduced this practice.

This deceptive practice impairs customers' loans, which results in small businesses, farmers and individuals forfeiting their assets and livelihoods, and suffering the indignity of social consequences.

Yours sincerely



Russell Cousins

Russell Cousins
Bank Victims Pty Ltd
PO Box 486
Maryborough QLD 4650

19 August 2015

[REDACTED]

Dear [REDACTED],

Thank you for making representations to [REDACTED]
[REDACTED] on behalf of Bank Victims.

Bank Victims has previously noted inconsistencies the statements made by [REDACTED]. My correspondence refers to the lack of transparency, integrity and efficacy of the FOS. The same shortcomings can be levelled at the practices of the FOS and in its relationship with the Australian Securities and Investments Commission (ASIC) and leading banks.

My letter to the [REDACTED] of 27 July 2015 discusses this matter. It alleges deception, dishonesty and potentially fraudulent behaviour by code subscribing banks. The letter required [REDACTED] to provide a response, which has not yet been received.

The facts set out in my letter to the [REDACTED] are set out below:

[REDACTED]
Parliament House
CANBERRA ACT 2600

27 July 2015

Dear [REDACTED]

RE: BANK VICTIMS, FOS AND BANK DIFFERENCES

I am writing at the request of Mr Russell Cousins, Bank Victims Pty Ltd, in response to your 16 June 2015 letter to [REDACTED] MP.

Your letter addresses matters relating to the transparency, independence and integrity of the FOS, as well its relationship with the Australian Securities and Investments Commission (ASIC) and leading banks. The letter claims that:

1. In regards to transparency, "*FOS maintains its transparency through the publication of information on its website, an Annual Review and annual reporting to ASIC on matters such as systemic issues*".

2. The "degree to which [the FOS] is independent from the major banks and other financial institutions", as "only a small portion of FOS' funding is from the annual membership fees of the financial services providers". Its membership fees make up "around 20% of the FOS' budget", while the majority comes from case fees.
3. The FOS "must commission regular independent reviews of its operations and procedures". A recent review of July 2013 resulted in 33 recommendations being made to improve "timeliness, organisational design, fairness, accountability, efficiency and effectiveness of FOS".
4. In relation to FOS' relationship with ASIC, it has taken stock of the recommendations stemming from a report of the Senate Economics References Committee on 26 June 2014, "concerning ASIC's oversight of FOS". You state that as of 4 December 2014, a review of FOS' terms of reference was formally approved by both the Board and ASIC.
5. The FOS' systemic issues team, in the 2013-14 Annual Review, received 1,903 referrals from its dispute handling teams, and 54 of these were resolved and reported to ASIC.
6. In regards to the transparency of FOS' Board of Directors, [REDACTED] states, "the Board does not get involved in the detail of any case and FOS decisions are independent of any interference from the Board".

As [REDACTED], you have responded to Mr Cousin's claims in relation to the efficacy, transparency and integrity of the FOS, and its relationship with ASIC and leading banks. However, your statements regarding Cousin's accusations are, in my respectful opinion, incorrect; in particular, the FOS' relationship with the banks has not been monitored carefully by government bodies and the regulators.

In the following response, I refer to matters that may well have been referred to you as factual, in your role as [REDACTED]. However, it is my belief that you have been provided with information that was misleading, and perhaps intended to mislead. The following matters are clarified in order to correct the record.

Relationship with major banks

In 2010, I was asked by the Council of Small Business Organisations of Australia (COSB) [REDACTED] w banks' contracts with small businesses. There is a link to the paper, "The Australian Banker's Problematic Code", below. The facts in your letter to Ms Rowland are substantially incorrect, in particular, the statements regarding FOS' transparency, independence and integrity.

The FOS provides a "cheap, speedy, fair and accessible alternative to Traditional Courts". It does this for customers to resolve their complaints or disputes against banks. There are cases where this is done well; however, there is considerable evidence that the FOS – for the most part – does not do this with clean hands.

The "Problematic Code" paper comments on clause 34(a) of the Code of Banking Practice. It states that the FOS, jointly with major banks, appoints the Code Compliance Monitoring Committee (CCMC) members. The members are then responsible for determining whether a bank breached its contract, as set out in the code.

The CCMC was, for a period of 10 years, unable to carry out its task due to its constitution, which was concealed or kept from the banks' customers. The banks could use the constitution to ensure that breaches of the contract with customers, as set out in its code, were not investigated.

First Code – 1993

In 1991, the Martin Committee, – after considering a number of banking codes throughout the world – recommended the government and banks establish a code of practice. The code, first published in 1993 and adopted in 1996, was intended to replace the court system as the main forum for resolving disputes between banks and customers. It required leading banks to have adequate dispute resolution schemes in place to fulfil this objective.

Revised Code – 2003

In 2003, the code was amended. In doing this, the banks introduced wording into the code that was misleading. The terms 'dispute' and 'banking service' were not used in their normal context. This enabled banks to mislead their individual and small business customers, and their customers' lawyers. Further, it did not comply with the intention of the code, which was *"to ensure customers are aware of their rights and responsibilities, and to ensure that banking contracts are not one-sided"*.

The insertion of confusing words and phrases did not comply with clause 2.1(d) of the code requiring banks to provide information to customers in plain language. It meant that banks could avoid having to comply with the 'internal dispute resolution' clause publicised in the code.

Modified Code – 2004

The duty placed on leading banks to investigate all complaints brought by customers is set out in standard contracts, of which the 2004 code was a part. Whilst in 2003, banks successfully removed obligations to investigate all customers' complaints, in 2004, allegations of misleading conduct by banks further escalated. As a result, the banks, with the FOS, introduced the CCMC to investigate any allegations of breaches of the code.

However, the CCMC was bound by a constitution that meant that its members did not have sufficient powers to routinely carry out their tasks. Both the banks and the FOS were instrumental in appointing the members, yet the banks' customers were not informed of the hidden constitution. This further document meant that code breaches now had virtually no prospects of being investigated.

It seems your letter to [REDACTED] dismisses the concerns of the Bank Victims regarding transparency, independence and integrity of the FOS. As [REDACTED] your position is such that the public would be strongly guided by your statements. Therefore, in my respectful opinion, you have not been provided with information that is correct. If my assessment is correct, it would seem your statements in relation to the transparency, independence and integrity of the FOS are misleading.

A Problematic Contract

The architecture that banks relied on when designing the constitution of the CCMC is set out in the definition of 'forum' in clause 2.1 and 'restrictions' in clause 8.1. The two clauses should be read together. This meant that banks

could refer a complaint to any alternative 'forum', such as mediation, thereby stripping customers of rights under the contract. There would be instances where customers resisted having their complaints dealt with by mediation. In these cases banks could, at their discretion, commence an action in court. Their customers' rights under the code would be extinguished.

Alternatively, banks could direct customers to the FOS, as the ASIC-approved external resolution scheme. As the FOS was also a 'forum' noted in the constitution, this meant customers were surrendering their rights under the contract by having FOS handle their complaint. This was all done without the knowledge of banks customers.

Furthermore, when customers used the ASIC-approved external resolution scheme, there is no evidence to suggest that FOS was required to advise customers they would sacrifice rights under the contract if FOS weren't able to consider their dispute. In my respectful opinion, the FOS has not been transparent or independent, nor has it acted with integrity. This view is supported by allegations set out in the "Problematic Code" paper, which, in 2010, identified the constitution as a concern.

To summarise, there is evidence that the banks and FOS continued to appoint CCMC members bound by a hidden constitution from 2010 to present. In light of these facts, it appears the FOS and code subscribing banks acted deceptively and dishonestly, to cause financial disadvantage to bank customers.

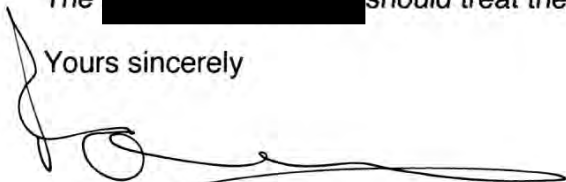
I suggest that [REDACTED] is entitled to believe that as [REDACTED] you will investigate the issues set out above.

Yours sincerely

Bank Victims believes that ASIC has a duty to explain why it has failed to prosecute dishonest banks. The above issues are of the highest importance to every bank customer, especially those that have suffered damages as a result of deceptive and dishonest banking practices.

The [REDACTED] should treat these matters as his highest priority.

Yours sincerely



Russell Cousins

Copy: [REDACTED] MP, Council of Small Business Organisations of Australia, TSBC.