

Subject: Re: Submission to review of code of conduct by ABA

Date: Wednesday, 31 August 2016 at 8:02:01 PM Australian Eastern Standard Time

From: Craig Caulfield [REDACTED]

To: Philip G Khoury <phil@cameronralph.com.au>

Hello Mr Khoury

Thank you for your email and assurances of privacy.

Given the time for submissions closes tomorrow and I only yesterday became aware of this enquiry I am having to estimate dates and other facts. I appreciate your patience in deciphering my poor grammar. I am happy to provide further detailed input and further evidence if this helps create the change I wish to see. I believe it is vital to receive a wide range of input directly from disaffected bank customers. I hope my case makes a difference.

I obtained a loan from CBA/Colonial for a property purchase in approx 2007. The property comprised 110 acres of cane farm, most of which was under various stages of growth or harvest. The conditions included clauses regarding division of the existing cane crop and other farming matters. We obtained a loan through a broker on a low doc basis. Within three years we found ourselves in a position where we had lost income from our wine and jewellery businesses and fell behind in our payments.

According to the CBA website and what I regarded as the right thing to do, my wife and I approached staff at a local CBA branch. We advised our circumstances and asked for advice/options. The staff member and manager were not able to offer any suggestions and contacted what I presume is the arrears department by telephone in our presence. The arrears department also offered no advice or suggestions except to wait for a letter. This is not the understanding or help we expected. The staff at the counter were also surprised that we were not offered any options.

Not long after we received a letter from the banks solicitor. We had not been told at the branch meeting that our account had been handed to the solicitor.

I can't recall right now if it was this letter or a later one where the solicitor requested full payment of the loan plus arrears and fees immediately. We were unable to make such a payment and we're obviously very worried. We made an offer to the solicitor to pay all the arrears, including all the fees in full and continue our loan payments thereafter. The solicitor immediately refused and demanded full payment of the loan principal plus arrears. At exactly the same time we had defaulted on loan payments with another property with a loan from ANZ. ANZ accepted our payment of all interest and fees and dropped litigation and we have managed this loan in the ensuing six years. I believe the solicitor acted so fast they did not even get advice from their client CBA. If they did then I believe CBA are derelict in their moral and ethical duties

Clearly being in a default situation is stressful, even though the fault was ours and not the banks. Not being able to liaise directly with the bank and having to handle the blunt instrument of their solicitors demands accentuated our stress.

Without the financial capacity to engage solicitors to handle our case we sought free assistance from the state government funded Rural Financial Counselling Service (RFCS) They requested a mediation or meeting under the provisions of 'Farm Debt Mediation' so that we could enter a fair and reasonable mediation. RFCS made several written and telephone requests in great detail. RFCS in fact we're only able to handle our case after an assessment process to determine that we qualified as a farm. The banks solicitors denied our request for Farm Debt Mediation citing we obtained a housing loan and we had no farming operations. Living in fear of repossession of our property we entered several very short term payment arrangements, which we were advised were our only option. The bank and solicitors did provide us many small extensions before repossession would occur so long as we made certain minimum payments. These short lease extensions did not allow us the breathing space to provide a fair and adequate response.

RFCS said we had no chance of challenging CBA. Our contract of purchase (supplied to the bank as part of the loan application) disclosed the farming conditions in advance of them financing us. Our rates notices and land tax was further proof. The bank hid behind their solicitors and would not engage with us and our requests to deal directly to reach a solution. When families like ours are living under constant fear of repossession and we make written tangible and genuine offers to pay all arrears and to find reasonable solutions then the bank

should have an obligation to engage genuinely too.

I believe the banks do not have adequate systems in place to deal with some difficult cases like ours. It is easier to simply remove themselves from the more difficult process of defaulting customers and hide behind their big gun solicitors. On several occasions where our CBA case manager did liaise with us directly they had no idea what to do. They ALWAYS referred us directly back to the solicitors, even though the same solicitors had requested we engage with the case manager. It was a roundabout, where they contradicted each other and certainly made it harder for us to find a fair resolution. I have been diligent in keeping as much contact as possible in writing and may provide details if it will help mine and the public's cause. Beyond the written financial contractual obligations the banks have systematically and consistently failed in their moral, ethical and common law duties to help engage to find a real way forward. This flies in the face of their PR.

The banks and solicitors are also aware that a borrower who is in default is not likely to have the funds to pay significant legal costs to fight the banks. The banks will always be able to buy a better result by affording a far greater amount of research legal and barristers fees. The recent court cases between NAB and Michael Sanderson is a case in point. Michael was self represented whilst NAB engaged five separate barristers. In the real world what chance of justice, real justice, does such a defendant have? Indeed the director and legal counsel for CBA argued in court that the bank has no obligation to comply with their own published code of ethics.

The RFCS advised they could not continue to allocate resources to my case and in any case were closed down after the state election as a result of budget cuts under the Newman government. On this basis we sought free assistance from Legal Aid. Not all defendants qualify, which is an issue itself, but fortunately we did. Again we requested participation in 'Farm Debt Mediation' again CBA and their solicitors flatly, bluntly and without addressing our detailed evidence of farming refused.

During this time CBA solicitors had requested a valuation be carried out on our property. They specifically advised it was not for the purposes of repossession etc but a normal banking practice. I didn't believe this even though the mortgage contract drawn up by the banks solicitors would probably give them that right.

Their valuation was to be paid by us and kept exclusively for their purposes. On the basis that we would be charged the costs I requested selecting a valuer from their own approved panel of values. This was denied. I also requested a copy of the valuation given we were paying for it. This was denied. I requested that the valuer attend our farm after a short dry period as our cane farm is located on the Maroochy River flood plain and access to the plantations at the rear of the property would be difficult. I wanted to present the property in its best light and be able to drive the valuer to our two plantations, confirming our farming status. Ten acres of Pongamia Pinnata trees for bio-diesel production and our four acre plantation of cabinet timber trees. We were featured on ABC TV newspaper. The solicitor for CBA threatened legal action during this process on the basis we were obstructing them (I wasn't) Legal Aid however strongly suggested I advise them I allow the valuer at any time and apologise to them. They further advised I was 'deluded' to even think I had a chance of any whiff of success in court. They explained that CBA made a profit of around \$8 billion a year and there is no way CBA would allow any win or precedent to be made in court. They further advised the best I could ever hope for was to allow time to sell the property to pay the debt. Well that's telling me straight! I eventually came to the position that I simply could not rely on Legal Aid to fight what I saw as a series of unethical conduct, conduct that breached the banks own code of ethics, conduct that I believe breached common law and contrasted with what the CEO Ian Narev was saying publicly about treatment of customers. The PR was purely lip service to what was actually happening in our case. Comments of a few bad apples was not borne out with our dozens of poor experiences on a systematic basis during EVERY point of contact over many years. CBA has been exposed in their wealth businesses. Later similar unethical conduct was found in the insurance division. I believe the mortgage division is yet to be exposed

I will be the first to acknowledge we fell behind in our payments, we defaulted on loan contract terms and the fault lay with us. What I became increasingly worried about, and depressed about was that no-one was there to listen or help us. Certainly not the bank, not CBA staff, not CBA case managers, not the government, not RFCS, not legal aid and later not FOS. The bank and their solicitors refused to engage in good faith. Twice we have made written clear offers of settlement, twice they have been immediately refused and no alternatives offered. I felt we were falling through the cracks and no one cared, most definitely not the CBA and their solicitors. I don't know if you could imagine or if I have explained sufficiently but I felt overwhelmed and had

no one to turn to. Shareholder returns, growing business bigger, profits, yields, return on equity left no room for a sense of fair play. I could not compete. I could not fit in. I didn't fit in. I contemplated my life, twice I contemplated/commenced wanting to leave/escape/suicide. Another time I simply drove off from my wife and children for several days not knowing who to turn to (I simply couldn't cope with not seeing any empathy or understanding, let alone hope). I didn't want to burden my family, I was reported missing to police (This becomes important later in our FOS hearing. Fortunately I called Lifeline and after a lengthy talk, opted out of suicide and saw my doctor as they suggested. My doctor put me on medication and referred me to a psychologist. I have continued taking medication and regularly seeing my psychologist for around 3 years now. I can understand how other farmers have felt and experienced suicidal thoughts (some of those farmers in similar circumstances to mine are no longer with us having killed themselves) Still being alive I feel like I have nothing to lose and see that it is my purpose in life to make a difference. On this basis I will fight. I won't give up. I want to make a difference in my family's life but it almost seems more important to make a difference to others who have or will experience similar situations.

ASIC does not have the powers to investigate all the issues I raise about systemic flaws and poor treatment and resulting suicides. A Royal Commission with a wide ranging scope, beyond just financial treatment by the banks is needed.

Without the finances to engage barristers and solicitors, the closure of the RFCS and my confidence lost in legal aid, we lodged a claim with the Financial Ombudsman Service (FOS). What a farce
Office holders in FOS have direct connections with the banks and in particular their solicitors. This is clearly a conflict of interest

CBA requested and were granted an extension of more than three months, yet when it came time for FOS to grant my request for four weeks extension I was cut to only two
It is wrong for FOS to favour the CBA.

Our request for non financial compensation at the time amounted to around \$250,000. FOS advised the limit was a paltry \$3000. This paltry amount is obscene but hardly surprising knowing the banks direct input into FOS terms of reference etc. This needs substantially increasing.

My first of seven points set on the agenda did have time for a full debate. CBA argued they had no obligation to help me when I first requested help at the counter due to legislation requiring such not being passed until 2 months later. I asked the FOS mediator to intervene and offer his view He agreed that FOS took the view that CBA did have an obligation despite the date of legislation of banking reform. (sorry I have forgotten the exact name of this legislation)

Our FOS hearing provided a copy of the valuation which CBA and their solicitors so regularly denied. When I read the valuation I fell over. Let me explain the background - The valuer and his cadet, selected by CBAs solicitor, who we met onsite had passed our tractor on our driveway and stood on our hill where we directly pointed out and overlooked our cabinet timber plantation. Plain as day. Moi and I were at pains to offer morning tea and be as pleasant as possible. I'd previously flagged to the banks solicitor that I wanted to show our plantations and entire property to the valuer as evidence of our farming. When we offered to drive the valuer and his cadet to the bio-diesel plantation he said it wasn't necessary. We really insisted he look as we done a lot of work in advance of him coming to highlight it as part of our valuation and evidence of farming whilst conditions were driveable . He seemed uncomfortable and in fact somewhat hostile. He said he can get photos of the plantations by using google images to include in his valuation. I wasn't happy with how the valuation proceeded. I have correspondence regarding my discussions of the valuation with both CBA and their solicitors.

Back to falling over on seeing the valuation. No evidence of farming was included! The photo of google earth was SO small and SO low in resolution that no evidence of farming was seen!! In fact the report categorically stated no evidence of farming was found, not even farm machinery. You have got to be kidding. Clearly the solicitor had pressured the valuer to ensure no evidence of farming was found. In this way they had no obligation to enter Farm Debt Mediation. Why else would the valuer lie about our tractor and cabinet timber plantation? This case should be examined and if what I am saying is correct the solicitor should be struck off by the law society. Do you think it reasonable I make a complaint to CBA? Well I did. Do you think CBA should investigate my allegations of collusion? Well they didn't. Further CBA case managers didn't even reply to my requests. I also raised them with the solicitor and also received no reply. (Should I be surprised?) I've been through a complaint with the law society of QLD and I can tell you I have very little confidence in their investigations.

I ask again should the banks have acknowledged my concerns? Should they have investigated? Should they have got back to me? These events are totally contrary to the code of conduct the bank publishes. These are also in stark contradiction of Ian Narev's determination to do the right thing at every time. I believe they also expose the banks to common law.

The CBAs solicitor has written to me advising I cannot raise these valuation issues in court as they are privileged information under FOS terms of reference. The bank is simply hiding facts that will expose them, this is not transparent or well meaning in trying to reach a resolution

Prior to FOS I was advised of a person to represent the CBA. I asked if this person would have the authority to reach a settlement which I outlined in advance and was put to CBA in advance. I also confirmed that FOS would not prevent me seeking non financial compensation exceeding their limit if I could strike a deal with CBA. A lot of discussion was held on this topic prior to the hearing. I was assured on more than one occasion he confirmed back that he was indeed authorised to reach a settlement, if we agreed. In the end, at the hearing, the CBA rep said he had no authority to reach an agreement and would need to seek higher authority. Even though he knew the amount we sought, even though he requested lengthy time extensions to further investigate, even though FOS and CBA knew my full story he could not honour his commitment. Another CBA and FOS failure

I was advised the FOS hearing would take 2 hours. After 4 hours and without being able to properly discuss all the issues I had flagged, the meeting was closed, without ability to reconvene. (It was after 5pm closing time) My hearing was compromised. My ability to put my full case was compromised. Nonetheless I was allowed no further input or adjournment. I assume time and budgetary constraints caused this but to my detriment, not the CBAs. FOS requires sufficient resources to provide fairer hearings. Would you agree

The FOS officer was aware of my suicidal attempts prior to our hearing. We had several conversations prior to the hearing as well as correspondence. I was not aware the FOS officer knew I had gone missing. It was interesting that he had received a police report of my disappearance that I was not aware of. I raise this as after the FOS hearing I psychologically collapsed. Steeling myself to air all these issues injured me, I basically collapsed with a breakdown after it had finished. I'd held myself together somehow for this event. I was simply unable to open the mail or communicate on any level. The mail piled up. Eventually I opened it to find a request and reminder to confirm the FOS report. I had three days left before a decision would be made. I immediately called to request an extension to reply to the 100 odd pages of information. My request was denied. I requested again on compassionate grounds that FOS and CBA were aware in advance of my depression to provide two weeks extension. It was again denied. This bias by FOS in granting ad infinitum extensions to the banks and denying my more modest request, under most difficult circumstance, is prejudice. Then again the connections between the FOS directors and officeholders and the banks and solicitors representing them must explain this? Would you agree this is a conflict of interest?

Finally on FOS why is there no mechanism available for someone to appeal their decision. It is a basic tenet of courts and the legal system to have the right to appeal. Why not FOS. Dare I say the conflicted parties are those same people determining the terms of reference? Whether my assertions are fact or perception would you not agree the situation is flawed?

I don't believe any director or any employee in any bank wants to create situations like ours. I believe Ian Narev when he makes his statements in relation to customer first, ethics and fixing the problems. He has been through his own personal traumas and I'm sure has genuine empathy. He is simply too far removed from the coal face of mortgages and the solicitors interactions. I doubt the material I asked CBA forward him was ever received by him? Certainly I received no reply. The problem lies with unintended consequences, little things that get out of hand as business grows. The cumulative effects of minor poor decisions compounding on further wrong actions. Failing to quickly enough and adequately enough make changes when errors in the system are found. Enquiries such as this one you are presiding over is some evidence of the banks trying to put things right. But so far changes and justice has not been enough.

I volunteer my time anywhere, at any time to contribute and join the ABA to upgrade and strengthen the codes of conduct and ethics that may have otherwise need to become legislation. If the ABA simply tries to APPEAR to be doing the right things and continue arguing against a Royal Commission they have failed their duties. I was lucky to have stumbled across this enquiry just in time to make a submission but I fear you will have way too few submissions from individuals like me. How much do you hear of the pressure on valuer to comply with solicitors requests. Culture needs addressing here, not a clause in a contract. Never a wonder why

employees are scared of whistle blowing. The PR published flies in the face of what happened to Jeff Morris and Dr Koh

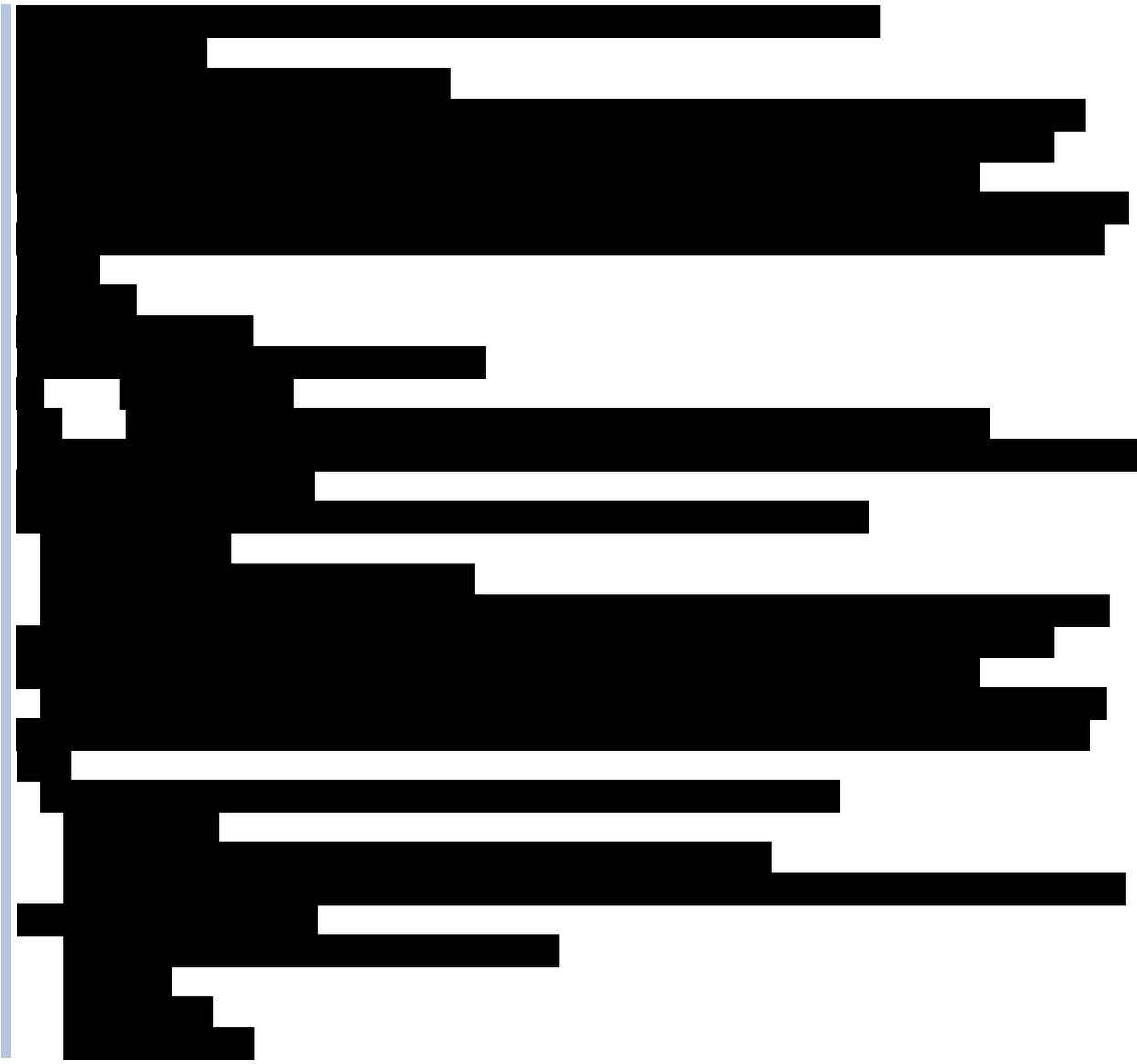
What will be published after submissions are received?
Am I able to obtain a copy and be kept informed of progress?
Will you open these to debate? Is the ABA brave enough?

Thank you for accepting my submission and I apologise again for my lack of skills in writing a more fluent letter

Best wishes

Craig Caulfield

Sent from my iPad

A large section of the document is redacted with black bars, obscuring the main body of the letter. The redaction covers approximately 15 lines of text.