SUBMISSION TO EXTERNAL DISPUTES RESOLUTION REVIEW Committee

MARK AND ANN WEIR

We thank you for this opportunity to provide the following comments, which we trust will be sufficiently relevant so as to represent a legitimate submission to the External Disputes Review of the Financial Ombudsman Service.
My comments are derived from my experience in establishing, with others, the Storm Investors Consumer Action Group Inc. (SICAG) in 2009, as a consequence of the Storm Financial events. Additionally, I draw on the personal experience of my wife and myself surrounding a complaint we lodged to the Financial Ombudsman Service, involving our engagement with the X Banking Corp. A chronology of events surrounding that experience is provided.

The Financial Ombudsman Service proved to be very proactive at the time the Storm Financial episode was unfolding early in 2009. Following the inaugural meeting of Storm Investors held on 21 January 2009, subsequent meetings of investors were held at provincial centers in Queensland, at which FOS representatives were present to describe the Ombudsman's role in disputes resolution with Banks.

Subsequently however, it soon became apparent that the elements that characterized the Storm Financial investor's circumstances, fell outside the FOS charter in respect of their complexity, financial magnitude and resource capability of FOS. (In regard to the matter of resources, a case in point was the fact that it took over twelve (12) months from the initial engagement with FOS for a Case Manager to be appointed to the Weir's complaint.) Very little evidence can therefore be presented to indicate that the services of FOS were relevant in attempting to ameliorate the financial destruction arising from the Storm Financial event.

The Weirs were one of the very few who engaged with FOS in the course or attempting to redress the financial damage sustained as an outcome of the Storm Financial episode. Accordingly, I provide the following chronology of events surrounding the complaint that the Weirs were encouraged to lodge with FOS, by X Bank, following negotiations with the Bank failing to reach an agreement.

The subject of the complaint related to the manner in which X Bank approved an investment loan facility to the Weirs in 2008, using the family home as collateral. The Weirs would contend that maladministration existed in the process of X Bank approving this loan.

Integral to this contention is the following justification for the Bank's lending decision conveyed by X Bank to the Weir's in a letter on 26 August 2009:

- "Your income was assessed on the 2005 and 2006 tax returns you provided with your application;
- We assessed that you had an income shortfall against your listed liabilities/repayments;
- We decided to approve the loan application, despite the assessed income shortfall, given the additional income that would be derived from your $ ---- ----- share portfolio, which was not included in the income assessment;
- The decision to override the income assessment shortfall was within Westpac's credit decisioning process which had regard for your financial position at the time of your application;
- Based on the available information at the time of your application your financial position was sound with a clear pathway to liquidate debt at any time."

In reference to the above comment that "the additional income that would be derived", we refer to the attached comments of the FOS Banking Specialist, Mr. _____, in his determination. He contends that X Bank was negligent in adopting the full projected return on the future investment and in doing so, conveniently repudiated the Industry standard of discounting projected investment returns by 50% on investments, when taken into contention for loan servicing.

It is also relevant to mention the Bank's decision to override its initial decisioning process, following the income criteria failing the serviceability test, on the basis of the strength of assets to liquidate debt. The Banking Code of Practice prescribes specific conditions in these circumstances where lending is based on assets. Banks are required to seek approval from the client for the Bank to use assets as collateral and have approval in writing, to do so. At no time were we consulted on this matter in the process. Furthermore, Storm Financial would swear an affidavit that it was not consulted on the matter. It is relevant to make the comment that while X Bank has continued to vigorously deny that it had any special relationship with Storm and that it was "different" to the other Banks in respect of its relationship with Storm Financial, it is not unreasonable to make the assertion to the contrary, in so much as this flagrant disregard for due process was almost certainly a product of the expedient relationship being propagated by X Bank to garner a greater share of the Storm business. It portrays compelling evidence that Westpac was indeed complicit in enabling the Storm Investment model to function.

SOME BACKGROUND

It is pertinent to mention that the Weirs were Storm Investors who lost substantial assets, the product of a lifetime's sacrifice and resourcefulness, in the events that culminated in the obliteration of Storm Financial.

It is probably not necessary at this stage to describe the full history leading up to the complaint being made to the Financial Ombudsman Service or the details underpinning the complaint. However a brief description is provided of the events surrounding their engagement with X Bank in so far as the Weir's relationship with the Bank, pertaining to their Storm Investment, is concerned.

In late 2007 authority was given to Storm Financial by the Weirs to seek expressions of interest from three Banks, including X Bank, to provide investments funds for the purpose of refinancing existing investment loans with the ANZ, amounting to $350K.

It is pertinent to mention that Mr. Weir had been a customer of X Bank, in one of its corporate forms or another since 1960. This included the Commercial Bank which merged with the Bank of NSW in 1982 to form X Bank. During this time the Weir's had successfully transacted over two dozen loans for a variety of investments without a single default. They had established an impeccable credit history and had experienced a very close personal relationship with a succession of Branch Banking officials. Although all of the Weir's personal banking was with the X Bank Nambour Branch at the time, Storm sought expressions of interest through the Townsville Branch, where Storm had its headquarters.

X Bank offered the best deal of the three respondent Banks, and it is interesting to note that in its offer, X Bank offered a "--- special rate for Storm---". The X Bank offer was duly accepted, including an additional amount of $230K added to the ANZ Bank refinancing amount. In the intervening period between when the expression of interest was sought in late 2007 and when the loan was drawn down on 1 April 2008, the Weirs had moved to London UK on a nine months visit on 1 January 2008. This caused the delay in transacting the loan.

Mr. Weir has a long history of negotiations with X Bank extending back to April 2009, ostensibly on his own behalf but in reality, endeavoring through the example of the Weir's circumstances, to advance the cause of all X Bank's Storm Financial investors. While all of this information is available if required, the emphasis on this description of events is directed at the dubious, if not iniquitously dysfunctional, process to which our complaint was subjected by the Financial Ombudsman Service.

Following negotiations between the Weirs and X Bank reaching a stalemate on 18 Sept 2009, they were advised that if they were not happy with the Bank's consideration of their circumstances, they had the option of lodging a complaint with FOS. This position was reached following the rejection by the Weirs of the X Bank's hardship solution offered to them (and other X Bank's Storm investors

who had difficulty servicing their loans) by X Bank. This offer amounted to compounding interest payments on the loan until the LVR reached 95%, to be determined by periodic valuations at the Weir's cost. When the Weirs asked X Bank to explain how such a solution represented assistance in the long term for them, the Bank representative replied that she felt that the "solution was in your best interests and in any event the Bank could not do any more for you in the way of hardship assistance as the Bank had the interests of its shareholders to consider"! It was at this point that Ms. _____, the Bank's then General Manager for Corporate Affairs and Sustainability, further advised the Weir's verbally, that, "-if you are not happy, you can lodge a complaint to FOS".

Subsequently, the Weirs lodged a complaint to FOS on their own behalf on11/09, surrounding that portion of the loan over and above the amount used to pay down the ANZ Bank loans. This enabled the Weir's complaint to comply with the statutory limitations that applied to the amount FOS was entitled to investigate under its charter. With the consent of FOS, Mr. Weir continued to actively engage with X Bank in an ongoing effort to have the Bank concede that, in consideration of the efforts that had been made by its Banking industry contemporaries, surrounding their exposure to the Storm Financial events, it was repudiating its responsibility to behave as a good corporate citizen in failing to emulate the example set by the other Banks. These other members of the 'four pillars', having acknowledged their exposure in these catastrophic events - euphemistically referred to as the 'collapse of Storm' - had already voluntarily established some formal schemes of relief for their Storm Financial impacted customers. Up to this present day, X Bank has simply waged a war of attrition that has amounted to nothing short of an attempt to bully its small group of Storm Financial clients into oblivion. Its primary argument, as indicated above, has been that its exposure to the Storm Financial events was '*different*' to the other Banks and as such it felt no obligation to proactively engage with its Storm Financial clients to assist in redressing their financial devastation. Other arguments resorted to by various X Bank functionaries in their correspondence with Mr. Weir, (extracts which are included below) to substantiate the Bank's inertia on the matter, was that the Bank had not been 'put on notice' by ASIC in the course of the corporate watchdog's Storm investigation, nor had it commenced legal proceedings against X Bank. The following is an extract of a letter from Mr. Weir to ASIC, bringing its attention to the Bank's assertions:

"---As I indicated to you, X Bank has defended its position by maintaining that ASIC has cleared it of having anything to answer for in its exposure to the Storm Financial events. In this regard I refer to the following extracts from correspondence, in the first instance, from Mr. _____, Head of Government and Industry Affairs to Senator Sue Boyce (22.4.2013) and secondly from Mr. _____, General Manager, Corporate Affairs and Sustainability to myself (13.10.11)" -

"------ As you are aware, the Australian Securities and Investment Commission (ASIC) has been undertaking a thorough investigation into the collapse of Storm Financial since around December 2008. To date ASIC has not made any negative findings, or commenced any Court proceedings against X Bank Group--"

and

"----- X Bank has also participated in a detailed external review by Australian Securities and Investment Commission. To date ASIC has neither recommended nor commenced legal proceedings against X Bank".

This defense by X Bank was brought to the attention of ASIC by Mr. Weir on 28 Oct 2014 and elicited the following response on 23 Dec 2014.

"------ You have raised the issue of X Bank's failure to defend its position by maintaining- 'that ASIC has cleared it of having anything to answer for in its exposure to the Storm events'. Although ASIC has not commenced legal proceedings against X Bank, this should not be interpreted as having cleared X Bank".

These claims by X Bank are simply an example of the extent to which the Bank has been willing to go in using deceit, if not mendacity, to muscle, bully and intimidate a course through this national catastrophe to avoid taking any responsibility to repair the damage.

When it became apparent that the X Bank's Hardship assistance package, described below, was serving no purpose in relieving the desperate plight of its Storm connected investors, Mr. Weir wrote to Ms._____, X Bank's CEO on 23 Sept. 2010 pointing out the inadequacy of X Bank's response to its implication in the Storm events in an attempt to have Ms. _____ acknowledge the full extent of her Bank's involvement in this disaster. Mr. Weir's letter was simply flicked for reply to the Bank's Disputes Resolution cell, causing any engagement with X Bank surrounding the matter, from then on to become a legal dispute. The disputes resolution group simply continued with the resolute position of denial, mainly based, as indicated above, on a litany of "weasel words", prevarication and downright lies, that X Bank had any influential cooperation in sustaining the existence of the Storm Financial investment model.

Following a meeting with senior officials of X Bank in April 2009, the Bank's response to the plight of its Storm related customers was to direct them down its in-house Corporate Hardship Assist program. Although lofty and noble in its aspirations of working together with the client to arrive at a mutually agreed solution, nothing could be further from the truth. Indeed, in practice it is nothing other than fatuous, self-serving and insincere, delivering little if anything in materially assisting the desperate situation of its customers. Indeed, there are

those who would testify that following the Bank extending payment relief for a few months, following which, when that ceased, the Bank told them to sell their home. The Bank then simply stood by while the client had no alternative but to do so. Many lamentable examples can be provided in which X Bank has forced people in their advancing years to become marginalized through its actions.

As time has gone on, a body of evidence has been revealed that very effectively illustrates and incriminates X Bank as having been profoundly insincere in its failure to honestly admit to the full extent of the Bank's relationship with Storm Financial.

19/10/ 2009
Engaged with FOS outlining the detail of the complaint against X Bank and the history of negotiations going back to March 2009.

10/11/2009
Acknowledgement by FOS of the Weir's complaint surrounding the manner in which X Bank refinanced their Loan from ANZ Bank in 2008.

8/12/2010
Agreement by FOS to investigate the Weir's complaint and allocation of a Case Manager – Ms. _____.

Following Ms. _____ appointment as Case Manager on 8/12/2010, in the process of familiarizing herself with elements of the case, she contacted Mr. Weir on a number of occasions during January/February 2011 to clarify a number of aspects of the case.

31/3/2011
Mr. Weir contacted Ms. _____to find out how the investigation was proceeding. Ms. _____ advised that coincidentally, she had received the previous day, FOS Banking Specialist, Mr. _____finding, following his investigation and that Mr. ---------- had determined that maladministration was evident in X Bank's approval of the Weir's loan application.

A copy of Mr. _____Finding is attached. (Attachment "A")

Case Manager Ms. _____ then advised that the next step in the due process of dealing with our complaint was that this Finding would be referred to the legal advisers to determine what remedy would be recommended, commensurate with the legal implications of the Banking Specialist's finding, the banking Code of Practice and other Banking conventions. Other than that, no mention was made by the Case Manager, herself being a Lawyer, that the determination by the Banking Specialist would be subject to further scrutiny or review by a further Banking Specialist or in fact the legal team. This stands to reason as logically

FOS lawyers are not banking specialists but rather are only obliged to consider the legal ramifications of the Banking specialist's recommendation surrounding maladministration.
(Copy of Case Manager Ms. _____ file note surrounding this phone call is attached (Attachment "B")

2 /5/ 2011 (36 Days later)
FOS Case Manager, Ms. _____calls Mr. _____ of X Bank, leaving a message on his voice mail saying that ---"the banking advisor had come back with the view that lend in dispute was maladministration". Ms. _____ then said that—"I was currently drafting the Finding and he should call me if he has any questions". (Copy of Case Manager Ms. _____ file note attached. (Attachment "C")

5/5/2011 (3 Days Later)
(Thursday) Case Manager Ms. _____ phoned the Weirs and left a message on telephone message bank asking them to contact her.

The Weirs were away visiting family at the time and did not access the message until 8/5/2011 (Sunday)

9/5/2011
Mr. Weir returned Case Manager's call but there was no answer, so a message was left on her message Bank.

11/5/2011
Mr. Weir received a call from a Mr. _____ at FOS advising that he had taken over from Ms. _____ as our Case Manager.
(It was not until some considerable time later that the Weir's found that Ms._____ no longer worked for FOS and was employed by the _____Bank in Melbourne where she remains employed as a lawyer. I have contacted Ms._____ on several occasions in an attempt to have her describe what took place surrounding her departure from FOS but she refuses to engage with me.)

Mr. _____ said that he would have to finish off other cases he had been working on but would contact the Weirs in order to bring himself up to speed with the Weir's complaint against X Bank.
Over the ensuing 5 plus weeks Mr. _____had a number of long discussions with Mr. Weir surrounding the Weir's complaint. While Mr. Weir did acknowledge that it was strange that these discussions seemed to be going over matters that had been addressed previously and found it difficult to reconcile with the fact that to his knowledge the Investigation into the matter, for all intents and purposes, had been completed, he interpreted it simply as Mr. _____ familiarizing himself with the case to enable him to write the FOS finding.

17/6/2011 (36 Days Later)
Mr. ---------- phoned the Weir's and informed them that he had reversed the original recommendation of the Banking Specialist and had now found in favor of X Bank.

Obviously the Weir's considered this turn of events as ludicrous in the extreme and informed Mr. _____ that under no circumstances would they accept such equivocation in regard to the FOS investigation.

17/6/2011
The strength of Mr. Weir's objection to Mr. _____ advice caused the Case Manager to send a copy of his finding by email that afternoon. The hard copy was received some days later.

8/7/2011
X Bank advises FOS of the Bank's acceptance of the FOS Finding.
(Although as a matter of routine, all correspondence between the complainant and FOS and the Bank and FOS is also forwarded on to either party, while the Weir's are aware that all of their Correspondence to FOS was sent to X Bank, the Weirs had to request a copy of the Bank's response on this occasion.)

13/7/2011 and 17/7/2011
The Weir's written response to the FOS finding, containing the strongest objection to this absurd process of events, was sent to FOS. It also stated that by any objective assessment, the manner in which FOS had handled the Weir's case, reflected poorly on the integrity of the organization and its reputation and that it fundamentally denied the Weir's natural justice.

The matter was then referred to the Chief Ombudsman, Banking and Finance, Mr. _____, for his review.

5/10/2011
Mr. _____ delivered his recommendation, repudiating the Weir's rejection of the FOS Finding and included the following comment regarding the organization's equivocation in arriving at the Finding:

"ASSESSMENT
---Before I address the issues identified for my review, I consider it necessary to respond to the disputants' comments that they consider FOS's integrity was

tarnished when my case manager did not uphold a decision of maladministration in lending that was conveyed to them during a telephone conversation on 31 Mach 2011

It is disappointing that an expectation of an outcome was conveyed to them by my office before the final decision had been concluded and that decision had been scrutinized by my legal counsel. Our decision making process is vigorous and has a thorough quality control process that it must pass before publication. I am satisfied that process contributes significantly to just and fair outcomes.

I acknowledge that the telephone conversation held on 31 March 2011 conveyed an expectation of a Finding of maladministration in lending which was not delivered. *However, a decision of maladministration in lending, in the circumstances of this dispute, would not have relieved the disputants of the obligation to account to X Bank for the principal sum of $_____K borrowed. Some consideration to apportionment of liability to pay interest on the new debt of $_____K advanced might have been appropriate but the disputants would still have been liable for the principal sum of $_____K plus interest on the majority of that amount that they used to refinance existing debt obligations.*-----"

The Weir's have responded to these cavalier comments by Mr. _____ (emphasized in italics) as being totally inconsequential, irrelevant – indeed contemptible – in his attempt to, trivialize, sanitize or dilute the seriousness of the breakdown in due process that the reversal of the original decision represented. The Weir's were fully conversant with the scope of any potential remedy that might have resulted from a decision in their favor by the FOS Banking Specialist, having had it explained to them on initial engagement with FOS prior to their complaint being accepted for investigation. Furthermore, as indicated in Ms. Roberts file notes following her phone conversation with Mr. Weir on 31 March 2011, the remedy to be applied following the finding by Mr. Moran, was discussed at some length.

Our dissatisfaction surrounding the manner in which our complaint to the Financial Ombudsman Service was handled, was conveyed to ASIC in an email on the 16 January 2012. You will be aware that while ASIC does not have a role in the day to day complaints handled process of FOS, it nonetheless does have an oversight role to the extent of determining the effectiveness of its function. In this regard, we might have at least expected an acknowledgment - even an explanation - from ASIC, instead of our correspondence being ignored.
It has been alleged, both by functionaries within FOS and also X Bank, that our dissatisfaction emanates simply from our not having got the outcome that we wanted. We would dispute that assertion and are compelled to say that had the process not been tainted with incompetence and equivocation, possibly even corruption, surrounding the manner in which the outcome was arrived at, our indignation would have been groundless.

During the intervening period from when the Financial Ombudsman closed the file on our complaint and to now, I have continued to actively engage with X Bank, again ostensibly on our own behalf but effectively on behalf of all of the Bank's Storm Financial connected clients.

In May 2012, X Bank conceded to us a 3 month mortgage payments moratorium when our liquid funds became exhausted and we could no longer meet our mortgage payment. In July 2012, this concession by X Bank was extended for a further 3 months conditional upon us retiring 62% of the loan with funds derived from a settlement received from the another Bank. This moratorium was further extended to January 2013 (a total of 9 months) at which time the Bank terminated the concession and we fell into arrears. On 5 April 2013 X Bank gave notice that it would be serving us with a final warning of default - 'shortly' - as the first step in the foreclosure process, if we failed to normalize the loan. (It should be noted that this presumptive action by X Bank came despite the fact that we were provided with not inconsiderable equity in our home following retiring the over 60% of the debt. Understandably therefore, our response to X Bank's stated intention conveyed that its action was nothing other than precipitous, if not reprehensible and pernicious.

On 24 April 2013, a Class Action was filed in the Federal Court against X Bank by Levitt Robinson lawyers, the upshot of which has been that no further correspondence threatening foreclosure has been received. In the meantime our debt continues to accumulate pending the transpiration of events in the Court. It is pertinent to mention that the Levitt action has fewer than 30 participants and as such, is precariously placed to sustain a protracted court battle. Needless to say, X Bank is patently aware of this and has engaged in what can only be described as deliberate obstruction clearly designed to frustrate and prolong the process.

18 and 24 August 2015

Further correspondence to Chief Ombudsman, Mr._____ highlighting deficiencies in FOS' consideration of our complaint and requesting that our file be reopened to consider those matters.

9 September 2015

FOS Reply to the above letters effectively closing the door to any further correspondence surrounding the case. FOS claims that--
"Your letters discuss matters relating to a decision issued in 2012 by a predecessor scheme to FOS. While we have responded to your correspondence over an extended period since 2012, our service has had no further role in your case. Your options have been external to our service since that time", and –
"There is nothing further that we can constructively add to our past responses. Any further correspondence will be filed only."

3 February 2016
Request made to FOS for all documentation surrounding the Weir's complaint to FOS and the subsequent Investigation into the Weir's complaint of maladministration in lending by X Bank.

26 February 2016
Documentation requested from FOS under the Privacy act was received. Documents contained included two Case Information Management System file notes, the first confirming the telephone conversation of 30 Mar 2011 in which Ms._____, our Case Manager, advises that the FOS Banking specialist had determined maladministration in lending by X Bank. The second file note refers to a phone call by Ms._____ to Mr. _____ of X Bank on 2 May 2011, leaving a message advising Mr. _____ that the lend in dispute was maladministration and that Ms. _____ was currently drafting her Finding and he should call her if he had any questions. (Attachments "B" and "C" referred to above.)

As indicated by the above time line of events, just three days after this phone call to Mr. _____, at X Bank, Ms. _____ attempted to telephone the Weirs but in their absence left a message on message bank, to return her call. We can only assume that the reason for the phone call was to advise that she would no longer be our Case Manager. The above time line describes what transpired following the Weir's failed attempt to contact Ms. Roberts on 9 May 2011

3 Mar 2016
Mr. Weir called Ms. _____, Senior Manager –Service Experience, X Bank, to discuss the ramifications of these documents. I explained to Ms. Cowie that we would contend that these documents unequivocally substantiate our long held belief that the investigation into our complaint had been completed and that the Case Manager was in the process of writing her finding. What transpired subsequently, surrounding the untimely departure from FOS by Ms._____ and the appointment of a replacement Case Manager, Mr._____, resulting in the 'back flip' in opinion on the matter, is open to conjecture.

We are compelled to say however, that these events cause us to form the strongly held opinion that the FOS investigation failed the integrity test in so much as, as well as purporting to be squeaky clean, it must also appear to be so. Accordingly, we believe the least cynical observer in the community could not help but view the elements with which the matter is tainted, as being perversely conspiratorial. Accordingly, in so much as the eventual outcome that resulted from this lamentable process has potentially disastrous consequences for the prospects of the Weirs maintaining tenure over their home, it is a matter that cannot be ignored by those who are the custodians in our society of ensuring that social justice is not being trashed and abused by institutions like FOS. In that

regard we have implored X Bank to acknowledge that reality, however the Bank's response, as usual, has been simply one of delivering weasel words of self-righteous denial.

Summary

It is the Weir's belief that the events described above represent a shameful indictment of an institution established for the express purpose of ensuring equity and social justice in the delivery of financial products.
In regard to this inquiry, one may ask the not unreasonable question –

" What is it in our society that gives cause for the hand wringing and breast beating that such an Inquiry as the EDR represents"?

When reading the lofty and noble aspirations articulated by financial institutions surrounding their internal disputes resolution systems, one might reasonably wonder as to the extent that only "lip service" is being paid to them, such that so many complaints ultimately end up with the external tribunals for resolution.
One might conclude that they exist as nothing more than a mantra to engender a feel good, warm and fuzzy inner glow designed to assuage the corporate conscience.
One institutions claim that its internal system is a model of empowerment to enable decisions to be made in the best interests of the customer. In this regard, it might well be concluded that this concept is contradictory to the incentivized remuneration culture that pervades the financial sector. When push comes to shove, even the most honorable in the community will have their best intentions compromised if they risk making decisions that cause detriment to their performance and financial position.

A further causal element for the need for external disputes resolution regimes is the demise of the Common law which prescribed the principles of respect, fairness and equity in settling disputes. The emphasis is now on black letter law in the context of – "If you are not happy, you can sue me"! Of course the environment that has resulted is tailor made for the legal profession and the Banking industry. It can reasonably be concluded that the growing profligacy and greed that has pervaded the culture of global financial services industry, prescribed by profit as all cost, has created this scourge on society. Regrettably the global community is reaps to aspire to and become, the most profitable corporations in our capital market economy. It was not intended to be this way and in recent times we have witnessed a groundswell of discontent in the community witnessed by a demand for a Royal Commission into the Banking sector.

If the handling of the Weir's complaint reflects the culture that is considered normal and acceptable by the FOS institution itself, then all that can be said about it is that the disputes system has failed the Community. It would be even more lamentable if those charged with overseeing and monitoring the performance of such institutions in our community, condone such dysfunction as acceptable.

In that regard, therefore, the Weir's can only encourage the Committee to recommend the disbandment of the FOS in its present form wherein it relies on its funding from the Industry it is charged with prosecuting. In its place, a "one stop shop" tribunal model that can be, and be seen to be, entirely independent in delivering fairness and equity to those aggrieved by an out of control financial services industry.

Mark and Ann Weir
7 October 2016

ATTACHMENT 'A'

FINANCIAL OMBUDSMAN SERVICE

Financial Ombudsman Service Limited
ABN 67 131 124 448
GPO Box 3, Melbourne Victoria 3001
Telephone 1300 78 08 08
Fax 03 9613 6399
Email info@fos.org.au
Website www.fos.org.au

Memo

To: [redacted]

From: [redacted]

Date: 30 March 2011

Subject: 113181 - Weir

Good afternoon [redacted]

I refer to your memo dated 25/02/2011 and apologise for the delayed response.

In the B's letter dated 23/2/2011, it sets out a number of different servicing scenarios aimed at justifying the D's ability to repay the loan based on income from the investment portfolio. I disagree with all of the scenarios but note that the 4th calculation comes closest to mirroring the treatment the B should have undertaken. Nevertheless, in my view none of the calculations are accurate and in my view, the provision of the $580K loan represented maladministration.

For the sake of simplicity, I intend to ignore the possible negative gearing tax benefits and deal purely with the B's failure to adhere to its own policy.

B's credit manual requires B's employees to verify the various types of income used in the servicing assessment. In respect to **Investment income** the verification standard for dividend income is that the applicant must produce the dividend advice(s) or the latest tax return and ATO notice of assessment. In this case the B was able to assess dividend on the basis of the 6/2006 tax return. The B did take the tax return but the ATO notice was not obtained and the dividend income as disclosed in the return was not commensurate with the income level the approving officer used to mitigate and override the previous decline.

The combined total distributions, capital gains and foreign income distributions for D as at 6/2006 was $31,336 plus a further $2174 in interest income. Note

that at this stage I am not taking into account any interest due to the ANZ in that year and am prepared to assess only the gross income. On that basis and in the absence of dividend advices, the B was entitled to assess the D's incomes at a maximum of $33,510 or $2792.50pm. Note also that the Storm assessment of income was limited to a combined income of $72,000pa and their plan assumed growth and dividends of 10%pa of which the dividend portion was limited to no more than 1.5%. In my view, it would not have been appropriate to take any capital growth projections into an income model.

B's credit policy on "serviceability" sets out standards for acceptability of investment income and I note that B's policy allows dividends to be assessed at 50%. Therefore regardless of whether the B's decided to accept $31,336 (as per the 2006 tax return) or $72,000 (as advised by Storm) for income assessment purposes, the D's total income was no more than $36K pa or $3000pm.

The following is an approximate assessment of commitments leaving out the Margin loan upon which I will comment later:

Credit card $49.4K @ 2.0% mmp	$ 988
Loan $580K @ SVR 8.57% x 30 yrs P & I	$4488
Living expenses @ HPI + 0.1% buffer	$2112
Total commitments	$7588

I have not taken the margin loan commitments into account in a servicing sense as the D was capitalising, paying in advance and re-fixing the fixed component of the margin loan each year and therefore not making a monthly commitment. Due to the nature of the margin loan and the security held, the lender would have been repaid in full and the asset/liability was self-liquidating. Had this occurred, dividend and distribution income would have reduced possibly below the assessed income level.

As an aside, in looking at some of the verification documents, I noted that the D's were identified with documents including two separate HSBC Gold Visa accounts. The D's have never raised this as an issue but it could be that they had higher potential commitments continuing after funding in the form of HSBC limits which were available but not being used.

Based on the above simple assessment and by using the B's own policy, my view is that the provision of this finance represented maladministration. The B's credit officer had merely misunderstood the information upon which he was relying (about the rate of return) and ignoring the requirement to discount the amount of investment income by a factor of 50%. The add backs usually used in a servicing exercise like this is less relevant when basing repayments on a projected income but it would have been relevant if the B was utilising an actual proven level of dividend and assessing the negative gearing effect.

The reality check to the above is that the D's were not meeting any monthly margin loan commitments and the net effect of their refinancing from ANZ was

that they were replacing $350K of debt at a maturing fixed rate of 6.79% and converting it to an 8.09% fixed rate (subsequently increased to 8.89%), so their commitment level was actually increasing by $7700pa on that amount. The extra $230K approximately borrowed was to cover possible minor future investments and interest as it fell due on the loan sought.

I might also mention that I regard B as being too slow in implementing the D's loan and in my view, they should have been able to fund the loan by no later than 22/2/2008. Had this occurred, the fixed rate applied to the loan would have been 8.49% instead of 8.89% and as the loan was interest only and fixed for the first 12 months (reverting to the B's SVR), B's delayed settlement of the matter cost the D around $2320.

[redacted]
Banking Specialist

ATTACHMENT 'B'

06-May-2011 **Case Information Management System** Page: 1

Case Action Details

Case Number: **113181**
Claimant Name: **Mr Mark & Mrs Ann Weir**
Claimant Address: 784 Eudlo Road PALMWOODS QLD 4555
Claimant Sex(es): F M
Claimant Phone(s): 07 5478 8054
Claimant DX No:

Bank Details
Bank: [redacted]
Subsidiary:
State: QLD

Case Action
Date: **31-Mar-2011 11:50:45 AM**
Action: TELO

[redacted]

Mr Mark & Mrs Ann Weir
784 Eudlo Road PALMWOODS QLD 4555
Phone: 07 5478 8054

INV

[redacted]

T/O to Mark Weir returning call. Mark asked for progress update as case has been ongoing for some time. I said that after receiving further infromation from [redacted] I had requestedour industry adviser to assess the dispute and form a view on whether or not the approval of the loan consistuted maladministration in lending. I said that our industry adviser was of the view that it did and I would be relying on his advice in reaching my decision.

Mark said in that case was he likely to receive a favourable outcome, I said, my finding would state that there was maldministration in the decision to advance the loan, however, what that actually meant in terms of outcome had been discussed before and usually involved a refund of interest and fees on the loan advanced beyond the refinanced amount. I said I know this was inconsistent with the compensation he was seeking, and he said yes, he had spoken to a lawyer and said he understood sometimes debt is waived if it should not have been loaned. I said each case is considered on its individual circumsatnces and in his case, the loan was obtained entirely seperate from the investment products - in these circumstances we would consider that the bank bore the credit risk - but not the investment risk. I said my understanding was that some banks involved with Storm were involved in providing loans, margin loans and investment products, which was not the case in his circumstances and [redacted] provided him with the loan, but the rest was seperate. Mark asked if the fact that [redacted] knew what the loan was going to be used for would make a difference, I said it wouldn't.

Mark asked if bank could appeal decision, I said either party could appeal decision within 30 days after it was issued. He said he thought this would show bad faith as bank was supposed to accept our view. I said both parties were entitled to question a decision reached and point out any mistakes they feel had been made. This applied to both him and the bank.

Mark asked where to from here. I said I would need to request the industry adviser to do an interest reconstruction, showing what the interest and fees on the refinanced portion came to. I said he had a large file load so this advice may take some time and I would not issue a decision for some weeks.

ATTACHMENT C

Case Action Details

Case Number: 113181
Claimant Name: Mr Mark & Mrs Ann Weir
Claimant Address: 784 Eudlo Road PALMWOODS QLD 4555
Claimant Sex(es): F M
Claimant Phone(s): 07 5478 8054
Claimant DX No:

Bank Details
Bank: [redacted]
Subsidiary:
State: QLD

Case Action
Date: 02-May-2011 5:05:30 PM
Action: TELO

[redacted]

Mr Mark & Mrs Ann Weir
784 Eudlo Road PALMWOODS QLD 4555
Phone: 07 5478 8054

INV

[redacted]

T/o to [redacted] left message saying that banking advisor had come back with view that lend in dispute was maldmin. Said I was currently drafting the finding and he should call me if he has any questions.