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Submission - EDR Review – by Stan Florek

Introduction

External Dispute Resolution (EDR) is exceptionally murky for the consumer. I believe it is meant to be opaque, because it serves as an interest of white-collar criminals, not the consumer. EDR as the main (if not the only) method of dispute resolution at the Financial Ombudsman Service (FSO) is enormously corrosive and corruptive. As a result, the FOS is essentially dysfunctional as an arbiter between financial services and their customers. At its best the FOS behaves as if it was Public Relations Company in service of the financial institutions; frequently it behaves as an accomplice in white-collar crime. These are only logical conclusions I can draw from my experience of running three disputes via FSO.

These disputes are related to the same criminal case perpetrated jointly by the as well as crooked licensed at the time by and subsequently by), property speculator (former director of), who manipulated me into a bogus property investment in 2010-11 under the pretence of creating some saving for my approaching retirement. As a result I am going to lose my home and superannuation.

As I was unable to find an administrative platform to claim recompense from Financial Adviser or property speculator, and the (notorious for the corruption and crime) was folded by ASIC, I lodged disputes against and on 1/04/2015 (both licensed Financial Adviser without scrutiny of his probity, effectively laundering crooked financial adviser). On 20/07/2015 I made a complaint to the , but did not receive any reply until it went through FSO on 20/08/2015. All three cases remain unresolved - I rejected the dishonest recommendations in favour of and and requested these cases be closed as unresolved (I have no confidence it was done this way). I also rejected the initial recommendation in favour of - recommendation from the review of this case still pending. I was informed in July 2016 that work on my complaint was concluded, but I will receive recommendation in the unspecified future for which even an approximate time frame cannot be given – I smell a rat.

I substantiate my assertions about EDR with well documented example of my complaint against (FOS Case 416318).

The essence of my complaint was that the , ***colluding with financial and property speculators, approved a loan manipulating me into an investment, engineered to profit speculators at my expense***. In its reply (2/11/2015) the Bank stated that I was able to service this loan (dubious - only if the value of asset was equal to a price of acquisition) and the Bank

obtained sufficient security (true – intending to repossess my family home) and therefore the Bank has no case to answer.

The initial recommendation issued by FOS on my dispute (17/02/2016) stated, in essence, that I was able to service the loan and the Bank is not required to compensate me for financial losses.

I rejected the recommendation and the process of handling my dispute for three crucial reasons.

Firstly, the essence of my complaint (Bank's wrongdoing) was not addressed, let alone investigated. Hence the recommendation was about an issue only marginally relevant to my case.

Secondly, the entire process of handling my dispute showed systematic bias in Bank's favour as well as appalling lack of transparency.

Thirdly, I experienced an astounding degree of contempt manifested by: a) a relentless dismissal of my concerns, b) a failure to provide truthful, clear, consistent and considered answers to my questions, and c) the use of arguments patently devoid of logic.

The entire process of dealing with my dispute was deeply crooked and this was, I am convinced, in large part due to the corruptive nature of EDR.

My confidence in the integrity of FOS and its staff was profoundly shaken. Hence I requested that my complaint was re-opened afresh and investigated in impartial and transparent manner. Also I requested faithful transcripts of all phone conversations I had with the Case Manager (I am aware of some practices of creatively distorted transcripts by the FOS staff). Case Manager conducted most of substantive communication with me via phone, leaving no reliable records of our conversation and her statements that would show bias, contempt, lack of logic and transparency in the process - eventually I received a feeble explanation that the recording machine was dysfunctional, and later still the Chief Ombudsman informed me in his letter that such conversations are not routinely recorded (sic).

The summary of my case illustrates how the EDR scheme works from the consumer's perspective. I wish to highlight attempts to obscure the records of my conversations with Case Manager, refusal to answer my questions about Bank's role in dispute resolution, and intercepted (stolen) letters to the FOS Board.

Case summary

The FOS officer handling my complaint reduced my complaint to a completely marginal and technical issue. She conveyed her "reasoning" through three lengthy phone conversations and very little in writing to obfuscate the records and the clarity of the process. Hence I requested the transcripts of these conversations (only notes were eventually provided on 25/05/2016 but uselessly general and superficial).

The tone and style of arguments was set by the Bank (2/11/2015) which denied its calculated manipulation and asserted that the loan was approved in line with its lending criteria (these criteria were not disclosed or specified). The Bank was not disputing my claim that there is discrepancy between the value of property and the price I paid, however it argued that "this variation is within the Bank's acceptable limits" (but what purpose deliberately inflated valuation does serve if not a

deceit?). The Bank did not consider it necessary or appropriate to support its flippant denial with any evidence. The only "argument" offered was that Bank obtained sufficient security for the loan and therefore cannot be held responsible for any wrongdoing. Falsehood of this "argument" is an affront to logic (valid reasoning) and common sense alike.

In her first letter addressing my complaint the Case Manager informed me that my case has low chance of success, namely because financial loses I already suffered have to be disregarded and these that were pending cannot be considered (sic). In the follow-up phone conversation she reinforced her view that I do not have a credible case and she told me (essentially) that the Bank can do whatever it likes and this is not my business. She sounded opinionated and left me with strong impression she represented Bank's interest rather than impartial and rational position to be expected from adjudicator.

I responded to this conversation in writing (23/11/2015), arguing the merit of my case, in slight hope that the officer had difficulty in understanding my case in the first place. I received immediate reply to my letter (24/11/2015) beginning with a sentence "I am concerned about the contents of your response and your expectations of FOS's role in relation to your dispute." She stated that "We will only investigate if the bank and/or broker (if it was the bank's agent) have made an irresponsible lending decision and you have suffered financial loss as a result." She also suggested another phone conversation. It was in this conversation that Case Manager restated forcefully her main argument constructed by linking the series of facts: I never defaulted on payments, I refinanced the loan, I have the property and receive rent income, I get a tax credits - therefore (she concluded) the Bank is innocent and has no case to answer.

She also argued that the Bank was not obliged to disclose any factual details such as inflated property value, level LVR, additional over $5,000 added without any explanation or the risk factor inherent in interest-only-loan. She effectively claimed that I was not entitled to know these facts and yet I should make an informed investment decision (sic). It is grotesquely crooked logic. The Bank, she argued, had no interest in my investment and no obligation to be transparent. Except that the interest-only-loan means that the property in question was to be owned exclusively by the Bank for 30 years and I would never effectively acquire it (after 30 years and paying total interest of well over half a million, I would have an option to purchase it from the Bank or to sell it and pay off the loan). In this case the Bank was an investment partner, but it cheated on me from the start (deliberately inflating property value by at least $20,000 and pushing the size of my loan to 130% LVR while keeping me misinformed).

It was at this point the Case Manager suggested that she could look at my current financial situation and would consider financial hardship as a factor in resolving my dispute. Shortly after this conversation she requested a comprehensive (tediously demanding) documentation of my past and current financial position, going back to 2011. I collated all the documents required and submitted them on time (by 30/11/2015). I did not receive any acknowledgement until I asked for it. I was later told that FOS is not obliged to respond to such matters and the Case Manager (answering my question) was not sure if she shared these documents with the Bank (sic).

By this time the Case Manager formed a definite view that the Mortgage Broker (agent accredited and supervised by , paid by the Bank, and admitted by as its agent) is definitely my agent and if anything was wrong I should take my complaint to her. So, the only issue remaining from my

complaint about the Bank's crime was whether or not the Bank made any error lending me $305k. It was ignored that that the Bank assessed my ability to take a loan on invented property sale price of $275k (rather than actual sale price $279) instead on the total loan amount of $305k for which I was to pay interest (difference = $30k). Note: with the existing mortgage on my home the total loan was over half a million (**$529,574.90)** for the family with two dependant children and only one substantive modest income (total household net income at the time **$75,265).**

On 17/02/2016 I received a Recommendation. It included a calculation of my income and financial commitments in 2011, showing, via manipulated figures, that I was able to take this deceitful loan and pay interest (at least initially) – this, the Case Manager concluded, shows beyond any doubt that the Bank is innocent and has no case to answer. I must point out, if it was not obvious, that this is a patently faulty argument.

Shortly before receiving this Recommendation, I wanted to know if and how much the Bank paid FOS for resolving my dispute. The Case Manager decided I am not entitled to know this. Indirectly she confirmed that Bank paid for my dispute (I was later advised by another banker that this would be about $5,000 – a generous amount for some photocopying and a few phone calls). The Case Manager refused to tell me if any payment was received from or on behalf of Mortgage Broker.

As I already learned (the hard way) that the secrecy implies manipulation and deceit I asked: "Is the , under the EDR scheme, in charge of handling my complaint, making determination if and how to resolve it, in whose favour, and drafting recommendations?" (9/2/2016). The Case Manager was unable to understand my question ("I am confused about what you are asking" she replied), but she answered that the "Bank does not draft the recommendation" (9/2/2016). If I take this answer to its logical conclusion, I must assume that the Bank was in charge of handling my complaint, making determination if and how to resolve it, and in whose favour. In the eye of an ordinary person this is a blatant conflict of interest, and its application results in corruption.

During our shorter phone conversation on 18/02/2016 I asked what role the Bank plays in resolving my dispute. The Case Manager answered that it does not play any role. I would like to know why EDR is called External Dispute Resolution and what it implies in practice for the customer like me. So, I asked the Case Manager similar question; she sent me to the FOS website to read about it. I could not find any coherent and useful explanation of how EDR works and how it affects the customers, especially fairness, impartiality and transparency.

On 10/03/2016 I wrote letters to the Chair and all members of FOS Board alerting them to the spectacular mishandling of my dispute and, implied, entrenched corruption. I never received any reply from the recipients, but was given, inadvertently, a clue that all my letters were intercepted (stolen). I requested ASIC and FOS the case of intercepted letters be investigated, but I am not expecting much action on this unpleasant incident, and consider to report it to the police. However, this episode made me question whether the Board oversee the FOS or the FOS "ménages" the Board, or perhaps they work hand in hand manipulating and deceiving customers to protect banks and other financial services in their criminal dealings.

It appears the EDR imposes such a strong imperative that FOS is effectively not accountable to anybody. FOS is not supervised – so told me ASIC and the Chief Ombudsmen, using their convoluted

jargon they indicated that neither ASIC nor the FOS Board involve themselves in the operations of FOS. Effectively the Chief Ombudsman is the highest and only arbiter – an equivalent of a dictator. I must infer that banks (and some other Members) that finance FOS pull all the strings - they make sure FOS operates in their interest, without any supervision and the essential mechanism of this arrangement, EDR, is unexplained to the public and kept as murky as possible. Not surprisingly the only easily accessible publication about EDR is a glossy poster devoid of factual information – I would call it total misinformation by total omission.

Conclusions

This is my reconstruction how the EDR works in practice: Member (eg. Bank) pays FOS $5,000 only when the victim of financial crime lodges dispute with FOS. This could be considered a slap on the wrist, but I think it is more akin to clandestine insurance policy. The payment entitles Member to resolve dispute as it likes (usually in its own favour – what a surprise!) and no logic, justification or scrutiny of any kind is required. The Member (eg. Bank) instructs FOS officer how to write recommendation. If the victim rejects recommendation and requests a review, the same process (without additional payment) is repeated again and recommendation is slightly rephrased. Occasionally, a tokenistic and symbolic payment may be awarded in exchange for signing legal document which exonerates Member (eg. Bank) from any legal, criminal or moral responsibility for the case in question. All these manipulations are knowingly and willingly approved by the Chief Ombudsman, whose position would be untenable in any organisation open to public scrutiny and supervised to ensure compliance with a broad public and economic interest of the country.

It is in the public interest of vital importance to examine what incentives, internal and external, overt and clandestine, and other pressure Bank and other financial services exert over FOS and its staff. It is crucial to analyse the corrosive and corruptive impact of the EDR scheme on FOS operations, its staff and customers. But the FOS looks so corroded by EDR that I don't think it can be reformed in current form to fulfil its function as honest and impartial arbiter of disputes between consumers and well-organised (and very well resourced) white collar criminals. In practice there is no difference between FOS and EDR. FOS became EDR – in plain English it is organised crime of highest order.

It is impossible to believe that whoever designed EDR was so vastly naïve or grotesquely incompetent. EDR has all characteristic of criminal intent and it would not surprise me if we learn one day that it was devised by banks and for the banks in the first place, and implemented by corrupted officials. Whoever approved and implemented EDR should be investigated, prosecuted and charged for colluding with and assisting massive organised crime in financial sector of our economy. EDR must be abandon immediately in the interest of the public fairness, effectiveness of the future Financial Ombudsmen, integrity of the financial services, economic security, and above all - basic justice.

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