A Submission to:

The Review into External Dispute Resolution and Complaints Framework.

And comments on the interim report dated 6 December 2016

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Review into External Dispute Resolution and Complaints Framework

Attn: Mr Ian Ramsay

Dear Sir

Please find below my submission to your review titled the *Review into external dispute resolution and complaints framework* and comments on the interim report dated 6 December 2016.

1.0 My experience

I am not a victim and seek no financial gain from my work in this area. However, I was bankrupted in the early 1990's by a bank when I had 100 employees. I have rebuilt my businesses and have had my fair share of run-ins with banks during this period. Currently I am not in dispute with any bank.

I am using my knowledge and experience to endeavor to achieve reform around commercial loan contract terms as well as compensation to many thousands of victims who have been treated badly. I have been working towards these objectives for four years. During this process I;

1. was instrumental in working with Philip Ruddock to establish the recent Parliamentary Join Committee for Corporations and Financial Services inquiry titled *"the impairment of customer loans."*(PJC)
2. submitted and gave oral evidence to the PJC Inquiry. I introduced relevant witnesses to the Secretariat. I attended every hearing day.
3. submitted and gave oral evidence to the Productivity Commission inquiry titled *"Business Setup,Transfer and Closure".*
4. submitted to the FSI and had a meeting with David Murray. I would like to think that his recommendations Nos. 34 and 36 were a result of my work.
5. met with the Small Business Ombudsman and her staff to discuss their current inquiry reviewing the report of the PJC inquiry mentioned above.
6. submitted to the current Treasury Inquiry, *"Improving bankruptcy and Insolvency laws."*

2.0 The focus of my submission

My interest lies in the area of commercial loans to the SME sector and my submission speaks to this matter.

You will be aware that in tabling the PJC report on *"the impairment of customer loans"* in Parliament, Philip Ruddock was scathing of the conduct of in relation to its treatment of the commercial loan customers following purchase of . You would also be aware that Senator Fawcett, the Chair of the PJC, spoke about "gaps in the system" in relation to the treatment of SME commercial customers.

My submission therefore deals with:

1. Reforms to contract terms between banks and SMEs to reduce the reliance on External Dispute Resolution (EDRs).
2. A tribunal to investigate disputed commercial loans (Legacy Disputes).

2.1 Why the reform of contract terms falls within the terms of reference

There is an imbalance of power between SMEs and banks. The implementation of fair contract terms between SMEs and banks will provide the opportunity for the court system to work effectively, thus reducing the number of parties seeking EDR options. This will reduce the burden placed on EDRs, which will increase efficiency of the dispute framework, provide equity to commercial customers, and drastically reduce regulatory costs incurred through duplicity.

The terms of reference states *"The review will have regard to efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs."*

2.2 Why a tribunal to review Legacy Disputes falls within the terms of reference

Legacy Dispute loans remain in dispute. Any review of an EDR and complaints framework must address all disputed loans.

Clause 3.4 of the terms of reference states, *"....any issues that would need to be considered (including implementation considerations), of different models in providing effective avenues for resolving disputes."*

2.3 Political and Social Expectations

The terms of reference for this review refer to:

- The three dispute resolution bodies that currently exist.
- Gaps in the system where disputes may arise and there is no effective dispute resolution body or process to address these disputes.
- The Recent Financial System Inquiry and the Government's response to this inquiry.

In addition to this, this inquiry was established following the release of the PJC report mentioned earlier. Recommendation 11 in that report refers to the establishment of a tribunal. This tribunal would have powers to retrospectively review disputed bank loans and *"to determine what, if any, restitution may be appropriate....with particular regard to unconscionable conduct".*

The public interest in this tribunal is significant. You would be aware that upon release of your interim report, the Australian Financial Review (AFR) ran an article which centered on the concept of "big T" and "little t" tribunals. This discussion had its origins in the PJC report and it was the Prime Minister's response to the damning evidence of bad behaviour by the banks that flowed from that inquiry. In fact the reporter, Joanna Mather, states *"Prime Minister Malcolm Turnbull's plans for a bank victims' tribunal have been dealt a blow by an expert panel whose central recommendation is to forget the idea."*

In my view we need to fix the process going forward, and I address the required reforms in this submission. However, the evidence from the recent PJC hearing is so compelling and so significant that we also need to have a process that will look at past actions by the banks and be able to provide justice retrospectively as recommended by the PJC report and as Philip Ruddock recommended when he tabled the PJC report in the parliament.

On 8 December 2008 Mr. Warren Entsch, the federal Member for Leichardt, made comments that were reported in the AFR. Mr. Entsch has many constituents who have been victims of bad behavior by the banks and he is following all the relevant enquiries closely. He is reported to have said, *"The tribunal needs to be able to make enforceable determinations, fully compensate victims and issue penalties to companies. It has to have teeth."* He also said *"The other option is a Royal Commission. I would be very surprised if quite a few of my colleagues did not have the same view".*

It is my understanding and I would suggest the expectation of the thousands of commercial loan bank victims that this review addresses both:

1. The improvement of the current EDR and Complaints mechanism going forward; and,
2. The establishment of a tribunal to retrospectively review contentious loans in accordance with recommendation No 11 from the PJC inquiry.

2.4 Magnitude of the problem with SME bank clients

Your interim report seems to focus on the smaller end of the dispute spectrum. I suspect that this has occurred as very few people know of the magnitude of the number and value of disputed loans in the SME sector.

The magnitude of disputes between SMEs and banks is relevant to both the EDR and Complaints mechanism going forward and retrospectively. Looking to the future, the objective must be to develop the system to ensure that the disputes and injustices that have arisen as a result of the existing framework do not occur again. Retrospectively, we must strive to right the wrongs that have destroyed so many Australian businesses.

As an example, we can consider one case of an SME that ASBFEO is currently investigating and that is . It is alleged by that the company failed due to inappropriate conduct by the . This company had 750 employees. It was a small public company based in . The Lavis started the business in 1978 and was the CEO up until the time it collapsed in 2008. It made a profit every year and in its last year of trading it made a profit of $23 million and paid tax of $7.3 million. is now bankrupt, he is living in a rented home and is driving a road grader for a living.

At the time called in the company's loan, this company was capitalized on the stock market at $250 million. If it is established that acted unlawfully then compensation for the shareholders and creditors of this company could easily be in excess of $500 million.

This is just one loan. You will recall that I provided you with 100 personal impact statements from customers. This is just the tip of the iceberg. At this time we do not know the number and magnitude of the loans that were defaulted and called in during the 2008-2009 period. ASBFEO is in discussions with and is endeavouring to establish these figures. What we do know is what was provided to the PJC by in evidence in 2016. In the 18-month period following the purchase of by , defaulted and called in 1958 loans that were classified as performing on the date of the sale of . On these loans claims to have lost $1.694 billion. The value of these loans alone would have been several billion dollars as a minimum and this would only have been a part of the commercial loan book that defaulted and called in at that time. **(Appendix 3)**

On 30 December 2016 at a public hearing, Kate Carnell questioned of the in relation to these loans and in particular why would call in preforming loans. answer was: *"But at some point the customer needs to repay the loan. And when requests were made to repay and the customer couldn't repay, then that fell into the category of no longer being a performing loan. So we have interest payments, important. Equally important is repayment of the principal sum."*

is saying that the term had expired and **even though the SME was paying the interest**, the loan was still defaulted and called in. Family businesses were closed, homes were repossessed and sold and Australian small business people were bankrupted. In many cases a lifetime of work was destroyed.

It is what is not saying that is of critical importance. These events occurred during the GFC. At that time I was in the market for finance for my business. It was common knowledge and I can testify with personal experience that banks would not look at financial proposals from SMEs that were not already a customer with that bank. The banks would politely say that they were only servicing their existing commercial customers.

is telling us that they were defaulting and calling in loans because their customers' loans had expired. Yet would have been well aware that these customers could not refinance with other banks.

The hypocrisy of is further demonstrated by the following statements made by to the PJC relating to the issue of the forced sale of properties.

> *"Indeed in circumstances where customers are encountering difficulty in maintaining their loans we have demonstrated our willingness to work with those customers to find appropriate solutions, including giving them time to address arrears and return to sustainable payment arrangements".*

> *"The reason for that is because our practice is to try to come to a resolution that does not involve a sale, or a forced sale of the properties. That is the last resort. It is not the first resort."*

It is my opinion that when full transparency is achieved around the events of 2009-2010, it may be established that this was the largest mass default of SME loans in history.

A tribunal needs to be established to review these disputed loans as the PJC recommended. In this submission I propose terms of reference for such a tribunal. **(Appendix No 2).**

3.0 Timing is critical for an effective EDR mechanism

Timing is a critical consideration in the planning of an effective and practical EDR framework. In relation to SME loans with banks, once a dispute occurs the bank has the power to immediately withdraw funding, call in loans, sell secured assets, call on directors' guarantees, sell directors' assets and finally bankrupt the directors. Not only do the banks have this power under their non-negotiable contract loan terms, they use it regularly. For evidence of this behaviour, you may wish to review approximately 500 submissions to the recent PJC inquiry and the 2013 Senate inquiry titled *Effects of the global financial crisis in the Australian banking sector.*

Any EDR mechanism will be worthless once the bank has completely destroyed the client's business, taken and disposed of all the personal assets of the directors and bankrupted the directors.

For this reason when a dispute occurs there needs to be a **"stand still"** provision to protect the SME while the EDR mechanism has a chance to function. I have addressed this matter in Appendix 1, *Reforms to contract terms between banks and SMEs.*

4.0 The Current Framework

Clause 3.2 on page 39 of the interim report discusses the current framework. The report mentions that the courts are a part of this framework. Whilst in theory this is true, in practice an SME cannot rely on the court system to seek justice. The reality is that an SME and smaller public companies cannot successfully go to court against the might and power of a bank. The reasons for this are:

1. **Costs:** This has been discussed in the interim report. The deep pockets of the banks will always exhaust any case brought before a court by an SME.
2. **Contract terms:** The non-negotiable contract terms between the parties are written by the banks' lawyers and in reality provide the bank with the power and legal right to do whatever they choose to do to their client.
3. **Timing:** Time is on the banks' side. With all funds cut off to the borrower, and assets seized as mentioned earlier, the SME business quickly fails and the borrower financially collapses.

If evidence is required to support this argument I can suggest that the committee considers the thousands of commercial loans defaulted and called in by . To the best of my knowledge there have been no successful court actions against . There remains only one matter that I know off before the court and that is the matter of . A litigation funder is running this case. The loan was in the order of $175m. The funder has committed to spend $20m in costs on this case. The dispute commenced in 2010 and the final hearing not expected until later this year.

5.0 Re-establish the court system and the FOS as effective EDRs between banks and SMEs.

The court system is the avenue that should provide an effective dispute resolution process for SMEs. The Financial Ombudsman's Service (FOS) is an alternative EDR mechanism for smaller disputes. Both of these bodies are failing the SME sector for similar reasons, which are discussed in this submission. Both can be repaired.

5.1 Financial Ombudsman Service (FOS)

The role of the FOS is discussed at length in the interim report. However, my proposition is that the assumed effectiveness of the FOS or any other larger or more powerful ombudsman services is not realistic.

Several statements from the report include:

> Heading: **Enhanced small business access to redress** (page 22)
> *"This is best achieved by ensuring the monetary limits of the new scheme for financial, credit and investment disputes are higher than the monetary limits of the existing industry schemes (FOS and CIO)".*
>
> Heading: **Ombudsman schemes and access to justice** (paragraph 2.19, page 36)
> *"Ombudsman schemes provide complainants with an alternative to the justice system",* and,
> *"Ombudsman services can also assist complainants to overcome power imbalances when helping them assert their rights when dealing with large companies".*

In relation to disputes between SMEs and banks these statements are meaningless as demonstrated by the following statement:

> Heading: **Approach to dispute resolution**
> *"Decisions...are based on what is fair in all circumstances taking into account...the terms of any contracts between the financial firm and the complainant".*

It is the terms of the contract that are the problem. The monetary limits of the ombudsman are irrelevant. The final outcome will be determined by the contract terms. We know that the banks write the contract terms and they have perfected them over the decades to the banks' best advantage. Moreover, the banks will not negotiate these terms. Under questioning by Philip Ruddock during last year's PJC inquiry, the of , was asked if the would negotiate contract terms. He said words to the effect *"sometimes but never for loans under $20 million."*

As Kate Carnell said to from during the Ombudsman's Small Business Loans inquiry , *"You would be a brave person to take on a bank in our court system, taking into account your 5000 page contracts and 4 million lawyers and all the rest of it".*

I have had a case with the FOS in relation to an insurance claim. The matter took nine months to resolve. In summary, the process was straightforward. Each party lodged a submission. The FOS considered the submissions, read the contract terms in the insurance policy and made a determination **based upon its reading and interpretation of the contract terms.**

An ombudsman in reality is powerless to *"overcome power imbalances"* between SMEs and banks unless action is taken to address the issue of the contract terms.

5.2 The Court System

The solution to the issue of a suitable dispute mechanism for the SME sector is not extending the powers of the FOS or the establishment of a new body. In fact, we already have an appropriate mechanism and that is the court system. The problem is that the current court system is failing SMEs. The court system is failing SMEs because in each case the court will read the contract terms of the loan agreement and find in favour of the bank in every event due to the strength of the contract terms. As an example, of all the thousands of ***performing commercial loans*** defaulted and called during 2008 and 2009 I do not know of one case where the borrower had success against in court.

The end result is that it is impossible for an SME to defend itself against the action of a bank in a court of law, in any circumstance. For example, one of my current commercial loan facilities contains 53 pages of conditions, including positive undertakings, negative undertakings, default conditions and common provisions all designed to give total power and control to the bank.

The banks would be far more transparent if they replaced their many pages of contract terms with a single paragraph such as:

"We are lending you the money today. We may call the loan in at any time for any reason. If you do not repay it immediately we may take your secured property and your personal property including your home from you and bankrupt you under your directors guarantee"

This is an accurate description of how the current system works.

6.0 Proposed Reforms

The court system has the ability to be an effective external dispute resolution mechanism for commercial loans. However, to achieve this we require legislative reform to commercial loan contract terms.

We must remember that the four big banks are the four biggest companies in Australia. Moreover, these four big banks make up 27% of the Australian stock market. It is impossible for an SME to resist the will of these institutions and equally as impossible to negotiate fairly on loan contract terms.

The solution is for the federal Government to legislate reasonable contract terms to be imposed over all commercial loan contracts. The courts would then rely upon these overarching terms in the event of a dispute. Please see attached my document *"Reforms to the contract terms between banks and SMEs"* **(Appendix 1).**

If these terms were legislated, then I would see very little need for a new external dispute resolution mechanism, as an SME would be protected from the predatory conduct of the banks by this legislation and receive a fair hearing in the court system.

Appendix 1 provides 7 proposed items of reform. Item 6 outlines reform required to the provision of security for loans. The rational behind this item is detailed below.

6.1 Directors' guarantees, Limited Liability and the Corporate Veil

My strong view is that directors' guarantees are unnecessary and should be prohibited. We should revert to the concepts of limited liability companies and the corporate veil. These controls are enjoyed by shareholders and directors in relation to public companies. However, banks have managed to break through these protections in their dealings with the SME sector by the use of directors' guarantees.

The use of directors' guarantees by the banks is of major concern and is directly linked to any dispute resolution system. I have been taking out commercial loans for over 40 years and I know how the banks use the guarantees.

In my earlier commercial life, prior to my bankruptcy, when I applied for a commercial loan facility a bank I would provide a list of the assets and liabilities of myself . In my naivety I would proudly provide such a list as I thought that it would help the approval process of the loan.

Following my release from bankruptcy, we set about re-establishing our lives financially. With the wisdom of hindsight and better advice, I now have no assets in my own name. Assets are held by and trust structures. When I take out loans these days, I still give a director's guarantee. However, I am the sole director and shareholder of the borrowing entity and I have no assets. I have never been asked to give a list of personally held assets.

It is clear that the bank has no interest in the assets of the director. The bank is only interested in using the directors' guarantee .

The loan document defines all the securities including the directors' guarantee as primary security. This enables the bank to demand full repayment of the loan from the director on the day it defaults the loan even though the secured asset has not been realized. When the director fails to repay the loan, the bank can then bankrupt the director and take complete control of the company and the secured assets.

Moreover, we need to look at the damage to our entrepreneurs, their families and our economy of a banking culture that sets out to destroy company directors. The Productivity Commission (PC) has written at length about the value and necessity of business continuity. The PC draft report titled Business Set-Up, Transfer and Closure, page 339 states, *"The committee recommends that the government commission a review of Australia's corporate insolvency laws to consider amendments intended to encourage and facilitate corporate turnarounds".* Bankrupting company directors is the complete antithesis of facilitation a corporate turnaround.

We need look no further that answer to to the PJC inquiry into *"the impairment of customer loans."* The bank admits in its written response that it called in and defaulted in excess of 1958 ***performing*** commercial loans in the 18 month period after it purchased The exact value of these loans is not known. I have requested the office of Australian Small Business and Family Enterprise Ombudsman (asbfeo) ask for this number. However from the information available, it would seem that the total value of these loans could be in the order of $10 billion. These people had their business and their lives destroyed and were often left bankrupt.

The banks are using directors' guarantees

. It is for these reasons I believe that director's guarantees are not necessary and counter productive in the Australian economy and should be prohibited.

This behaviour by the banks feeds directly into your terms of reference relating to a need for an effective external dispute resolution mechanism. It is my argument that the only reason an external dispute mechanism is being considered is because the banks have effectively rendered useless the existing dispute resolution mechanism that is the court system.

7.0 Legacy of Disputed Loans

Adopting the reforms that I have suggested will, in my opinion, provide a solution to the external dispute resolution mechanism going forward, allowing the court system to perform as intended.

This still leaves the matter of the legacy disputed loans, the loans Philip Ruddock referred to when he tabled the PJC report in Parliament and the loans referred to in recommendation 11 of that report.

These loans need to be reviewed by a tribunal as recommended by the PJC and as referred to by the Prime Minister since the tabling of the PJC report. The problem is that if these loans were reviewed on the contract terms between the parties, then in the vast majority of cases the bank could justify its actions. However, the evidence from the PJC is that the banks acted unethically or unconscionably.

For these reasons I have prepared a proposed terms of reference for such a tribunal, based not upon the contract terms between the parties but rather on the ***motherhood statements made by the banks during the PJC hearings.*** These terms of reference were originally drafted following discussions and consultations with Philip Ruddock during the PJC inquiry.

In other words, I suggest that the banks should be judged and held to account upon how they say they behave rather that the contract terms between the parties.

The difficulty for a tribunal reviewing the disputed loans is that many of these loans have been before the court in one form or another, sometimes defended but often not. In order to circumvent these court judgments, the banks would have to voluntarily agree to have the disputed loans reviewed. I would think that the banks would resist this process vigorously.

However, I would also argue that the banks would have difficulty in resisting such a review if the terms of reference were based upon their own motherhood statements made to the PJC Inquiry. **(Appendix No 2).**

Appendix 1

Reforms to the contract terms between banks and SMEs

1. **Under no circumstances should a bank be able to default and call in a loan for an alleged non-monetary default.**

   When small business owners go to bed at night and know that in relation to their bank loan they have paid their interest, insured the security and paid any security related outgoings, then they should be able to sleep soundly in the knowledge that when they wake, their loan will still be in place. Under no circumstances should a bank be able to default and call in a loan for an alleged non-monetary default.

2. **In the event of a monetary default, a 6 month stand still provision will apply and a 12 month provision for farm loans.**

   In the event of a monetary default, the bank must advise the client of the default and quantify it. From this point there will be a "stand still" period of 6 months (12 months for farm loans) where the client has the opportunity to rectify the default by restructuring the business. This may involve selling assets, raising capital, reducing costs and the like. During this period the bank will not be able to move on the security and will not charge penalty interest. If the monetary default is rectified and interest brought up to date, the process is finished. This proposal has some similarities to the USA Chapter 11 model, however it is a shorter time period and does not involve the courts.

3. **Commercial loans dispute Tribunal.**

   If after the six month period has expired and the monetary default has not been rectified, then prior to the loan being defaulted and called in by the lender, the borrower may request that the loan be referred to a yet to be established commercial loans dispute tribunal.

   This tribunal would be similar to a residential rental tribunal. Suitably qualified commissioners would assess whether the corporation would be likely to recover financially if more time was granted. The tribunal would either grant an extension of time to the borrower or allow the lender to take action against the secured assets of the borrower.

4. **A notice period provision of 6 months to apply to all loans.**

   When a loan is nearing its expiry date, the bank must give written notice to the client at least 6 months prior to the expiration date of the loan, of the bank's decision not to roll over the loan. The bank will give notice that it will require full repayment of the loan on the expiry date. If such notice is not given then the loan will continue to run for a period of 6 months after the date when such notice is eventually given.

5. **A hierarchy provision to apply to all securities.**

In the loan documentation, securities must be given a hierarchy and not all treated as primary securities, as they are currently. In the event of a monetary default that is not rectified, the securities must be accessed in order as listed and each security fully realised prior to accessing the next security. As an example, a standard hierarchy would be:

i. Secured asset.
ii. Borrowing entity usually a company.
iii. Directors guarantee. (Recommended to be prohibited)

6. **Reform of securities provided for commercial loans:**

i. Prohibit directors' guarantees for commercial loans.
ii. Prohibit cross collateralization of securities.
iii. Prohibit a company charge intended to circumvent the rights of a borrower under a loan contract.
iv. Prohibit access to other unsecured assets.

When a commercial loan contract is signed the bank will obtain a first mortgage over a primary asset such as a real estate asset. As the loan is a commercial loan, the loan will be to a company, secured by this primary asset. So at this point the bank has the following security:

i. The primary asset, generally real estate.
ii. The security of the company, being the borrowing entity.

In addition, the bank will traditionally request other securities, such as directors' guarantee, a company charge and cross collateralization with other assets.

The bank will also include a contract clause that will give it the right, in the event of an alleged default, to take money from other accounts held by the borrower even though those funds do not form part of the security.

These other securities should be prohibited. The bank should assess the risk of the loan based upon the strength of the secured asset and the borrower and not act as a vacuum cleaner and suck up all other unrelated assets that may be controlled by the company directors.

7. **Parties cannot contract out of these conditions.**

To ensure that the intent of these reforms is achieved, legislation would be required to prevent the parties from contracting out of these reforms.

Appendix 2

The terms of reference for a tribunal investigating disputed commercial loans

The Review Mechanism

You would be aware that the recent Parliamentary Joint Committee for Corporations and Financial Services inquiry titled *"the impairment of customer loans"*, (PJC) recommended the establishment of a tribunal to review *"contentious cases... retrospectively...with particular regard to unconscionable conduct"*. I would suggest that we could expand on this.

During the PJC hearings the four major banks and their representatives gave advice to the Committee in relation to how they deal with loans that they regard as being in difficulty. This advice includes the following statements:

Australian Bankers' Association
"Enforcing security is very much a last resort." Submission 47 page 1.

ANZ Bank
"We seek to work through difficult situations with the primary aim to get the customer back on track. Only after all other avenues of working with the customer have been exhausted, often after a number of years, does ANZ seek to takes steps to recover the debt. Legal or recovery action is costly for all parties and is only contemplated as a last resort"
Submission 49 page 3.
National Australia Bank
"NAB has a long history of putting the customer at the center of everything we do".

"Impaired customer loans at the NAB are dealt with through an extensive and inclusive process where our customers are supported in alleviating any challenges that exist in meeting their responsibilities".

"Working constructively with our customers is NAB's priority".
Submission 50 page 3.

Commonwealth Bank
"Indeed in circumstances where customers are encountering difficulty in maintaining their loans we have demonstrated our willingness to work with those customers to find appropriate solutions, including giving them time to address arrears and return to sustainable payment arrangements". Submission 48 page 2.

Mr. Cohen: *"The reason for that is because our practice is to try to come to a resolution that does not involve a sale, or a forced sale of the properties. That is the last resort. It is not the first resort."* Testimony 2 December 2015 to PJC.

Westpac Bank
"Often there will be a substantial period of negotiation where the default may be remedied before it reaches the stage of enforcement."
Submission 126 page 12.

From these statements it is apparent that the banks share similar goals and objectives that they strive to achieve in their dealings with commercial clients who may be in financial difficulty. These goals and objectives could be described as benchmark commitments. A summary of these benchmark commitments is included in the tribunal terms of reference below:

Tribunal Terms of Reference

The tribunal will in each case:

1. Review the evidence presented by the bank and the client.

2. Assess the conduct of the bank ***not*** against the contractual rights that the bank and the client may have, but rather whether the bank complied with the following benchmark commitments:

    a. To work with commercial customers to help them get back on track.
    b. To give time to commercial customers to address arrears and to return to sustainable payment arrangements.
    c. To put the customer at the center of everything we do.
    d. To aspire to act in a consistent, transparent, patient and compassionate way.
    e. Impaired customer loans are dealt with through an extensive and inclusive process where customers are supported in alleviating any challenges that exist in meeting their responsibilities.
    f. The appointment of receivers and or the forced sale of assets to recover a debt are the last resort and are only used when all other avenues of working with the customer have been exhausted.
    g. To always act ethically and conscionably.

3. Conclude whether or not the bank complied with the benchmark commitments. If the tribunal concludes that the bank did so, then no compensation would be payable. On the other hand if the tribunal concludes that the bank did not comply with the benchmark commitments then compensation would be paid to return the customer to a position that it would otherwise have enjoyed if the bank had met these commitments.

I would suggest that this is a very fair, reasonable and logical approach and one that the banks would find difficult to dispute.