

From: [REDACTED]
To: [AFCA Review](#)
Subject: FW: Re Submission to Tresury on the review of AFCA 26th March 2021
Date: Friday, 26 March 2021 9:16:46 PM
Attachments: [Banking Associated Issues.docx](#)

Dear Minister

Complaint against Rabobank & Landmark.

We did not use the AFCA process because the compensation limit of \$2m to be to low.

The fact that \$800,000.00 to \$1m of crop proceeds were taken and used by receivers R.S.M Bird Cameron. (The crop not being secured in any way to Rabobank).

Our case was referred to ASIC by F.O.S in 2010 (Case No 5311595) on the basis that a Notice of Assignment was not issued but to our knowledge action was never taken.

Included is a statement sent to Deputy Prime Minister Michael McCormack which briefly outlines our case with Rabobank and Landmark.

We consider this \$2m maximum amount to be far to low.

Regards

Don Turner

[Don & Sue Turner](#)

[REDACTED]
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Position Statement 17/10/2017

This situation where at the same time Landmark for the second time in 15 years sold their finance book to ANZ Bank. The problem with this is Landmark did not inform this customer of its situation.

In 2008 the LIBOR \$A committee was discovered and identified to be receiving the benefits of the corruption of the LIBOR identified as world interest rates dropped the LIBOR remained static or rose. I attach an article that identified the situation. Australia has not dealt with the RABO Bank situation where the parent Company had been identified as a major beneficiary and participant in the swindle. RABO Bank advertise it has international finance links and funds are raised overseas consequently it is possible RABO Australia directly benefitted from the LIBOR and BBSW situation (2010-2012) in Australia. RABO parent was fined \$2bn in one European situation but in Australia there appears to be no investigation and no follow up. In this situation RABO Bank overcharged interest and kept the benefits of using the account default and the problems for this family commenced at that point. The situation and what it meant in time Landmark chose not to front a Farm Debt Mediation because no breach by the customer had occurred only the guarantee against RABO was affected. RABO would have known of the Landmark situation and chose to misuse the situation to destroy a powerless customer. The legal process was compromised where the same legal firm represented Landmark and /or RABO without informing their client.

This means the clients had no real legal representation at any stage and with two gross breaches of contract and equity against the family and that the Farm Debt Mediation process has become hardened against bank customers where Bankers use the process irrespective of the mediator or those present to muddy the waters AFTER the meeting first day to obtain the required prosecuting certificate and lawyers do not give proper representation because of lack of the customers' ability to pay. Clearly in this case a claim for frustrated contract because of circumstances out of the control of the customer and where they were not informed properly a further claim removing the customer liability. Landmark did not appear at the Mediation and the failure to correctly notify the customers of the situation may be the reason so a circumstance for lost justice may have occurred.

After this background:

Receivers were appointed after a series of issues evolved from actions taken by Landmark Operations and Rabo Bank in 2005. These issues which involved the withdrawal of an overdraft facility and the purchase of a property led to the demise of our farming operations. These issues which are quite complex led to the charging of penalty interest rates and ever increasing legal fees but the major issue created by the withdrawal of the overdraft facility was a very limited time to find funds to repay the Landmark Facility. This facility, bearing in mind that drought conditions had been

prevailing for a number of years. This account was some soon declared to be in default, thus eliminating any chance of refinancing our overall farming operation. Although our business was considered to be viable and loan to value ratios acceptable by two major banks we could not refinance because of the seasonal finance facility (overdraft) was in default. Rabo had at that period provided funding for the purchase of an adjoining property but would not consider paying out the overdraft facility or any part of it. Thus with poor seasonal conditions excessive interest rates and not being eligible for interest subsidies which also require support from the lender we were unable to service the debt.

Rabo were offered addition security to pay out the Landmark-Rabo, their response was they wanted to take the security but would not pay out the Seasonal Facility. The Landmark Rabo Facility was withdrawn coinciding with the takeover of Landmark by AWB. The security and Letters of Demand cited both Landmark and Rabo demanding repayment of the Seasonal Facility

In October 2008 we were taken to mediation by Rabo. The medication appeared as a process the bank was just going through. No concrete arrangements were set down at the mediation. The Heads of Agreement was never signed yet a Section 11 Certificate was issued (stating the mediation was all in good faith). The mediator deemed the mediation to be in adjournment. Rabo Bank also drew all their mediation and legal costs from our bank account. Legal advice also deemed the mediation to be in adjournment. Rabo drew their legal cost for the mediation from our account this was deemed to be not in good faith. After considerable time Rabo agreed to pay out the balance owing to Landmark requesting a Livestock Mortgage. Any additional security should be in the Heads of Agreement. This led us to lodge a complaint with the Financial Ombudsman Service. Eventually Rabo repaid these costs as it appears they were in breach of the Farm Debt Mediation Act.

Landmark were not present at the mediation this we believe is a breach of the Farm Debt Mediation Act. Any discussion that we tried to raise about the Landmark-Rabo Account was quickly squashed by the Rural Councillor, [REDACTED]. Prior to the mediation we demanded a meeting with a Solicitor Ian Geddes, under duress [REDACTED] arranged this meeting. The solicitor stated that we had a strong negligence claim and requested further information. The solicitor did not take any further action but we were threatened by the Rural Councillor [REDACTED] that if we did not comply the Sherriff would be sent out to take control of the properties.

The FOS also stated that the original Seasonal Facility (administered by Landmark), Rabo had a legal obligation to notify us by Notice of Assignment that Landmark had the sole right to recall the Loan. Rabo stated in a letter to the FOS that they assigned these loans to Landmark in 2007 ours being withdrawn in 2005.

The FOS referred our case to ASIC (Case No 5311595). ASIC to our knowledge never took any action

As a family business we feel we took all possible avenues to resolve issues that continued to arise. Manage the properties, cropping rotations, livestock husbandry and breeding plans using the best agronomist and Livestock advisors available. Manage the finances, assuring accounts were paid, assuring that maximum income was achieved with farm and contracting income, keeping in mind that we had endured ten years of severe drought conditions.

Receivers were appointed on the 6th October 2010 after the FOS could take no further action because of legal proceedings.

At the initial meeting the Receivers did say that the crop proceeds would be put in a trust account but did not explain why. The reason being that Rabo did not have any security over the crop (Crop lien), and therefore the proceeds of the crop should have been held until secured assets have been realized. Crop proceeds should have been used to pay crop related costs. The fertilizer account for the crop was to be paid in January 2011 and as it was not paid a Statement of Claim was issued by the supplier. \$400,000.00 was paid to Rabobank between January and April 2011 from crop proceeds.

We maintain that Rabobank and the Receivers and Managers they appointed over our former farming properties and livestock acted improperly, and negligently with respect to the seizure and sale of those properties, livestock and crops.

We further maintain that the solicitors acting for us failed to advise us in respect to a number of issues arising out of Rabobank's conduct and the conduct of the Receivers and Managers being [REDACTED] and [REDACTED] of RSM Bird Cameron.

By Rabo not having security over the crops that all the costs associated with the crops, including fertilizer, pesticides, fuel, wages, needed to be paid by crop proceeds nor could Rabobank as the Receivers dictate how the crops were to be sold and we were later advised that the full value of the crops should have been offset against the Rabo Account.

We were not advised by our solicitor that we could take legal proceedings to ensure the crops were sold at proper prices nor did they advise us that we could apply to the Courts for a Stay of Enforcement based upon the crops available and the finance approval obtained nor at any point did our solicitors advise us that Rabobank were also informed that the only settlement that the bank would accept was the sale of all properties not refinancing.

A settlement was agreed to at a mediation in Parliament House in Canberra by Senator John Williams. The result being we were left with the remaining assets we had and \$30,000 to pay [\[LF1\]](#) the fertilizer account still outstanding and the Bank forgo repayment of the remaining debt. We were requested to provide a position statement but the receivers did not provide any information e.g. financial or position statement.

Around five years after the world's financial system buckled and forced taxpayers to fund huge rescues of crippled banks, public and political outcry has been stoked in part by industry gripes about tough new rules to rein in excessive risk-taking and fat bonuses blamed for feeding greed.

SHAMELESS FRAUD

Dutch Finance Minister Jeroen Dijsselbloem said Rabobank's "shameless fraud by financiers" was far removed from the cooperative ideals of the lender's founders.

But the size of the fine imposed on Rabobank - a mutual lender that finances Dutch cheese and tulip producers and which has abolished executive board member bonuses - sends a stark message to institutions such as Germany's Deutsche Bank [DBKGn.DE](#), which have yet to reach regulatory settlements.

It is the second largest penalty to date and bigger than initially expected at a time when banks are also setting aside billions of euros to cover civil litigation costs from clients who allege they were short-changed by the scam.

RELATED COVERAGE

[Rabobank provision for Libor fines is sufficient: executive](#)

Deutsche, Germany's largest bank, set aside an extra 1.2 billion euros on Tuesday to deal with potential litigation costs, while UBS [UBSN.VX](#) in Switzerland was told to hold extra capital to cover looming liabilities.

██████████, a Rabobank board member, said the bank had only learned the fine would be about \$1 billion six or seven weeks ago - indicating that regulators are taking an increasingly tough stance. Back in February, a fine of the order of \$450-\$600 million had been expected.

Britain's Financial Conduct Authority (FCA) said the Rabobank fine was particularly high because it had failed to act after an employee responsible for submitting the bank's yen-denominated Libor rates told an internal audit group in 2009 his submissions were based on instructions from traders.

In March 2011, Rabobank had told the British regulator its Libor-related systems and controls were "fit for purpose".

The FCA said it had found over 500 instances of attempted Libor manipulation, directly or indirectly, involving at least nine managers and 19 other individuals based across the world.

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“Rabobank’s misconduct is among the most serious we have identified on Libor,” said [REDACTED] at the FCA. “This is unacceptable.”

CROOKS IN THE MARKET

The U.S. Justice Department agreed to defer criminal charges against Rabobank for two years, and drop charges if the lender complied with demands to cooperate in investigations.

Documents released by regulators showed Rabobank staff taking a dismissive attitude to regulations.

When one yen derivatives trader in 2007 asked a colleague responsible for answering the daily survey used to set Libor to give a false rate, the submitter responded by email: “Don’t worry mate - there’s bigger crooks in the market than us guys!”

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In 2006, a Rabobank dollar derivatives trader repeatedly asked the head of the bank’s money market desk in London, who supervised the rate submitters, for rates that favored his positions. After one request in December, the desk head wrote back: “I am fast turning into your LIBOR bitch!!!!”

Rabobank, which said it was committed to “learning the lessons of the past”, has tightened systems and controls. Of the 30 staff involved, 10 had already left the bank, five were fired with a sixth case pending, and 14 have been disciplined, board member Schat told Reuters. The bank stressed it was financially strong enough to withstand the fine.

Although it said no executive board members had been aware of or involved in the misconduct, the board had voluntarily forfeited remuneration worth a total of 2 million euros.

UBS has faced the largest Libor penalty to date. It was ordered to pay \$1.5 billion last December and two of its former traders have been charged with taking part in an alleged multi-year scheme to rig rates.

The Libor scandal has prompted regulators to scrutinize benchmarks across financial markets, from crude oil and swaps and gold to the \$5.3 trillion-a-day foreign exchange market in an effort to stamp out misconduct.

“I wish I could say that this won’t happen again, but I can’t,” noted Gary Gensler, the chairman of the U.S. Commodity Futures Trading Commission (CFTC). “Libor and Euribor are not sufficiently anchored in observable transactions.

“Thus, they are basically more akin to fiction than fact.”