9th December, 2015

Committee Secretary,
Parliamentary Joint Committee on Corporations and Financial Services,
P.O. Box 6100
Parliament House
Canberra. ACT. 2600

IMPAIRMENT OF LOANS

Dear Sir/Madam

Could I please provide a supplementary submission to my original submission no.18.

On reading the submission no's.45 & 46 of ASIC and the FOS it is apparent that they believe they are doing a fantastic job when in fact their decision making is abhorrent and completely biased towards their paymasters, the FSPs'. When talking of the FOS the same can be said of the CIO as they are of the same gene pool, collectively will refer both as the FOS.

To an outsider you would almost believe that the structure of their organisation and fairness in their determinations would be flawless when in fact it is merely a cleverly disguised system that gives the appearance of a well- oiled machine, all smoke and mirrors with traits of a chameleon, fairness couldn't be further from the truth and makes ones blood boil. There is an agenda and that is the protection of the FSPs' at all costs. The bankers, ASIC, FOS, and CIO are so closely linked with each other, their employment changes between each organisation hence keeping their relationship in-house and the gene pool rolls on. To be honest, it is all but a clever attempt to deceive inquiries and government, it is treachery and something they have been very successful at doing for many years.

All in this group, their treatment of aggrieved borrowers in no –low doc fraudulent mortgage loans should be of great concern to this inquiry, government and the population of our country as denial of bad banking behaviour, their decision making is undoubtedly biased and most likely ILLEGAL. ASIC, FOS and CIO have been ignoring directives and a principal made by the Banking Ombudsman in 2002 which are still current to this day and have never been rescinded. When reading bulletin no. 36, it was obvious that the Ombudsman seen the need to protect consumers from no-low doc fraudulent mortgage loans when banks and their bank trained brokers were prepared to use misleading and fraudulent tactics on the loan application forms (laf's) all done to deceive and to get deals through, resulting in mega profits to the FSPs and broker commissions. Greed has seen them ignore their responsibility in prudent lending and the bankers' code. What should have happened originally was the loan rejected if employment and financial earnings were not up to scratch or meeting their criteria. Just because a person may own their home does not automatically qualify them for loans, let alone people with no employment, they must have the capacity to make continual repayments. By not allowing borrowers to see a completed copy of their laf is where the

deception or fraud starts, as fictitious earnings, employment, assets and debts are added to lafs without the borrowers knowledge or consent after signatures obtained, only to justify to themselves for granting of loans. As designed, loans implode anywhere between 4-7 years and normally unsuspecting borrowers are not aware that they have been set up to fail with an impaired loan, bank walks away with that family home and any other finances the borrower ever had.

I think it would be very appropriate for the inquiry to read in full the Bulletin no.36 as it was plainly written, clear and unconditional, also made with intentions to stamp this corrupt fraudulent practice out, unfortunately both EDRs' refuse to acknowledge its existence and deliberately change its intentions to the benefit of the FSPs' if ever queried on it. When told of it they simply make lame excuses with lame conditions or simply refuse to answer questions when asked. The Ombudsman obviously had seen the need for specific actions against lenders if they were to choose to adopt such toxic behaviour. It should be noted that he first raised this issue in bulletin no.32 which for some unknown and deceptive reason, has been taken off the FOS web site, no doubt so that inquisitive eyes couldn't stumble upon it. If the EDRs' were to apply these directives as the Ombudsman intended it would ensure that their desired outcomes could not be achieved in favour of their paymasters. Both EDRs' elect to take the easy or biased way out when misleading and fraudulent information has been found on laf's with limp excuses like "you have the option to get a lawyer" or "not in their TOR", when in actual fact they do have the powers to rule in borrowers favour. Maladministration in Lending is one of the downgraded terminologies used for the unscrupulous act of "fraud" and this is in their capabilities to act on. If they believe that they cannot handle cases, what is the use or purpose of the EDR system, when it is set up for a cheaper alternative to the court system when borrower finances have been scammed from them?

An ineffective biased regulator and the EDR system, share the common interest of protecting the financial service providers at all costs and has left aggrieved consumers with no place to turn for justice. The EDRs' do have the powers to award in borrower's favour, it is maladministration in lending, instead they are left to their own devices which ultimately end with impairment of loans. Lately the FOS have been awarding blame 60/40 or less and if you are one of the slightly luckier ones, they have been occasionally reducing loans by wiping the debt of the buffer loans, although this is only a very temporary fix, ultimately the borrower will be left with nothing and a burden on the welfare system for the rest of their lives. Buffer loans are given to borrowers to pay for repayments and property expenses, it's these loans that mask the unaffordability, once again, and ultimately these monies run out resulting in impairment. This action along with signing confidentiality agreements ensures loan impairment is spread out so as to not cause a glut of impairments, helps with the reporting of statistics to government and also helps to buy the borrowers silence for the FSPs'. Cases will not be reopened once already dealt with, even when told they have erred in the collection of information and used incorrect information in their decision making.

I could keep writing on this topic with the way my wife and I fell victim to this bank fraud related scam and how it works, but I truly believe the members on the inquiry should have a fair idea of its structure by now especially with so many victims reporting very similar cases and the lack of involvement of the regulator and the insipid EDRs'. On closing I implore the inquiry members to read the following Bulletin 36 and also wonder why the FOS removed Bulletin 32 from their web-site. Banks have acted as a cartel in deliberately designing a faulty fraudulent bank product, designed to

strip all property and assets from borrowers including the family home, all done under the noses of ASIC who were warned of this in 2002 and have done nothing to remedy.

To enable the correct truths to prevail I implore this inquiry to forcefully recommend a Royal Commission into this sordid affair with the widest terms of reference.

Once again thank you for the chance to be involved and in allowing the public to make submissions and if any more information is required I am only too happy to supply. Please take the time to read this Bulletin no 36 as it is extremely important and relevant to one area into why there is Impairment of Loans.

BULLETIN NO 36

DECEMBER 2002

In this Bulletin:

- **Agency of brokers – update of approach**
- **Native title claims and bank lending policies**
- **EFT disputes and financial hardship**
- **Issues featured in our Bulletins this year**

1. Agency of brokers – ABIO Revised Approach

Introduction

The December 2001 Bulletin (Bulletin 32) set out our approach to the question of when a bank will be liable as principal for misleading and deceptive conduct of a broker who is involved in the marketing, application for or establishment of a loan or other financial service.

We have recently reviewed our approach as a result of the following observations in the cases that have been considered by us:

- An increase in the use of brokers by banks for activities which go beyond merely providing information about available products and assisting in the completion of the loan application and extend to activities which would traditionally be the responsibility of the bank lending officer or back office of the bank;

- An apparent increase in the delegation to brokers by banks of the responsibility of explaining the loan offer or security documents or both, including an apparent refusal by banks in some cases to have direct contact with the borrower, instead referring all questions to the broker;

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- An increase in the sophistication of the contractual arrangements between banks and brokers, reflecting the broader range of activities undertaken by the brokers, and indicating, in our view, the giving of actual authority to the broker to carry out what would otherwise be regarded as aspects of the bank's role in the lending process.

Summary of revised approach

- It is more likely that we will conclude that a broker is an agent of the bank if the bank has no direct contact with the borrower and/or the borrower is referred by the bank to the broker for explanations about the loan offer, the product features or the security documents.

- We will place less weight on statements made to borrowers that the broker is not the agent of the bank and will place more weight on the actual arrangements in place between the bank and the broker.

- Similarly, we will place less weight on clauses in the agreement between the bank and the broker which seek to deem the broker not to be an agent of the bank and more weight on the agreement as a whole.

Discussion

It is becoming more common for banks to outsource to brokers the tasks traditionally carried out by an internal lending officer – explanation of product, taking of the loan application and notification of approval.

In such cases the bank will pay commission to the broker and will usually have in place a referral or broker agreement. The agreement will usually contain express statements such as 'The broker is not the agent of the bank', although it will also, usually, require the broker to indemnify the bank against any liability it may have as a result of misstatements by the broker – in the absence of agency the bank is unlikely to have any liability so the indemnity in that sense contradicts the express statement. The customer may also be asked to sign an acknowledgement that 'the broker is your agent not the bank's agent'.

The aim of such statements is undoubtedly to distance the bank so far as possible from any errors, omissions or misstatements that may be made by the broker. Nevertheless there will be cases where a bank will be liable for misleading or deceptive conduct by the broker.

Liability of a bank for misleading or deceptive conduct by a broker

A bank will be liable for misrepresentations or other misleading and deceptive conduct by a broker if at the relevant time the broker was acting as the agent of the bank. The agency may be a limited one and it is possible for a broker to be the agent of the customer for some purposes such as sourcing the finance but the agent of the bank for the purposes of taking the loan application and providing product information. Agency may be either actual or apparent.

Actual authority

Features that will, in our view, establish agency based on actual authority:

- Express authority to act as agent for the bank in one or more respects - such as in identifying the customer, completing the application form, taking the loan application to a certain stage or providing information with the express authority of the bank *and* under the control of the bank. For example:
  - the broker may be provided with information produced by the bank and be subject to the direction of the bank as to how that information is passed on to the customer;
  - the broker may be given express permission to use the bank's logo in documents produced by the broker;
  - the broker may be given express permission to access the bank's internal system to gain and communicate information about the progress of a loan application;
- Referring the borrower back to the broker when the borrower had specific queries about the loan product or offer, saying that the broker could answer all the borrower's questions to the bank or refusing to provide information except through the broker;
- A requirement to comply with internal bank policies such as a code of conduct when dealing with loan applications and to be trained in those policies and practices, particularly where there is any component of performance review.

The code may, for example, specifically authorise the broker to give applicants information about bank products, how they work and what are their terms and conditions. This is consistent with an intention that the broker will be carrying out some of the bank's own functions on behalf of the bank; or

- Payment of a commission - although our view is that this needs to be in combination with other factors.

Apparent or ostensible authority – examples of a sufficient holding out

- Referring the borrower back to the broker when the borrower had specific queries about the loan product, saying that the broker could answer all the borrower's questions to the bank or refusing to provide information except through the broker;

- Not correcting the understanding of the borrower that the broker was acting for the bank when the bank knows that the broker has been holding themselves as having authority to do so;

- Allowing the broker to use a title that would normally only be given to an agent;

- Allowing the broker to use or display the bank's logo in association with the broker's own promotional or contractual material;

- Allowing the broker, in the presence of the borrower, to access internal bank systems to establish the progress of an application; and/or

- Holding out the broker as having some authority without making it clear that the authority is limited;

- Payment of commission – in combination with other factors.

The relevance of express statements in documents

An acknowledgment signed by the borrower, that the broker is the borrower's agent and not the bank's will be taken into account in determining whether the broker was held out as having authority to act for the bank. But it may not protect the bank where clear representations to the contrary have been made and it will not assist the bank if it is contrary to the actual arrangements between the bank and the broker.

In other words, it may mean that there will be no holding out, but the bank will nevertheless be liable because the broker is actually the agent of the bank at the relevant time.