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Resolution of disputes with financial service providers within the justice system

I would like to make a submission to the Committee in consideration of the above, I am a person dealing with a large claim against larger subsidiary banks in QLD, We have been dealing with the BANK directly as this is required by AFCA. This process has been going since July last year and bears considering how the process fails consumers. The BANK chose to use Mediation to settle the Claims against them after admitting Maladministration in Lending; The ironic situation we are in is that the Person who committed the fraud was the BANKS own Franchisee/Owner Manager, documents discovered under FOI showed this activity and the BANK, the BANK has not admitted wrong doing in writing – but chose to engage in a Mediation process to settle the claim, the 3 offers put to us on the day, simply did not reflect the gravity of the claim, nor consider proper compensation that would be awarded through other avenues;

Mediation was the facilitation process they chose, which set a process afoot causing us to be represented in the Mediation by Solicitor and at an added cost of around \$30,000 we can ill afford, and the matter has still not resolved, the BANK has chosen a figure that they are as it seems to write off, coincidentally only relates to the Interest paid on the Unjust Loans, and no other compensation: The Bank is unwilling to be transparent in refusing to disclose who they have come up with the Figures stating “commercially sensitive”. Our claim is around \$550,000 for both loans:

By the BANK Advocate department taking these stands, we are unable to consciously make a decision to take an offer if we cannot understand what the offer is: I have a chronic Stress, Anxiety, Panic Attack condition which the BANK has been supplied with a number Medical certificate confirming the condition: The worst was I had 5 panic attacks during the Mediation Conference, leaving the room gasping for breath and having to try and comprehend what was being said: The Solicitor and Mediator/Barrister both put pressure on us at the end of the day to take the BANKS offer, its the best you’d get, it will cost you \$200,000 is you have to take it to Court: We couldn’t accept the offer because I didn’t understand the offers: I challenged the Solicitor the day after stating I was not in a Legal Capacity to make a decision on accepting any offer from the BANK because of the distress I was under on the day, and he should not have been pressuring me to make an offer knowing my condition and the distress I was in:

Matter still unresolved- giving it one more chance with a Solicitor who may be able to define what our claim was really worth and if the BANKS offer was reasonable –if not we will put an offer back to BANK and hopeful have it resolved – otherwise we have to go through AFCA which could be a hit and miss affair anyway –what options do we have?

Not being dramatic but coming from a place of pain, every day it is a challenge to function ordinarily, when you have a condition such as mine, (and so many other have) the frustration of the system and lack of being able to find the right help, becomes all consuming when it is your home you are fighting for, especially when you are 65 years old. As evidenced in the News so often, people feel they have no other recourse but to escape the pain, as they can see no justice nor resolution processes that is fair, cannot find competent assistance through the Legal System, and such organisation as (FOS) AFCA. People just get so frustrated with the whole nightmare they are living and *give in to the pain* and the only way out is to end their own lives. Are the BANKS profits really worth more than people, *who leave behind, children and loved ones who will never be able to reconcile why, why what went wrong!*

Summary of Submission

1. Banks do not want to be transparent
2. Are unwilling to fair and reasonable to BORROWERS
3. Are using their power against the Borrowers by engaging in Legal matters forcing Borrowers to engage in Legal Cost they cannot afford and do not pay for those costs even though they have case such cost to be expended by the borrowers pursuing legitimate claims:
4. BANKS hiding behind without prejudiced procedures to bully Borrowers into accepting unfair or unjustified offer by them
5. NO access for Borrowers to competent Legal advice, facilities available or offered as help to consumers are inexperienced and or do not know the Borrowers legal rights and do not know how they may be applied to each person's case
6. Do not know how to assist Borrowers in quantifying their claims correctly
7. AFCA does not assist Applicants in advising them how to work out quantum in claims – there is no clear or defined material on the matter and Applicants are referred to reading case determinations “to see what they said to guide you” in effective and frustrating.
8. Legal Cost are unnecessary to resolve disputes through the Advocate departments but they engage in tactics such as Mediation which the Borrowers have to engage legal representation for as they have no guidelines from the BANKS or representative as to what Mediation is or how it will be conducted or what you need to present to the case or issue that need to be resolved:
9. Undue pressure is exerted by the ALL parties to accept offers that are not even quantified by the bank and the Borrowers' have no idea if they offers are fair and reasonable, they are faced with bullying tactics by Representatives saying, best offer you'll get, you can't afford to go to court it will cost you around \$200,000 no offer for you to take the next step before court which would be AFCA
10. Conflict of interest by BANK picking Mediator who had won cases for the BANK in wrongful lending. Being forced into Mediation unprepared – not knowing how it would be conducted on the day, Role of the mediator what that was What Material you need to give to the Mediator, what issues were still unresolved, what would be done about that in mediation, How to present an offer by the Borrowers,
11. Solicitors for the Borrowers took advantage of them in a vulnerable unprepared position and cost them \$20,000 plus and the matter is still not settled with Offers by Bank refusing to advise Borrowers how the offers were worked out:

Answers to the Terms of reference

- a. *whether the way in which banks and other financial service providers have used the legal system to resolve disputes with consumers and small businesses has reflected fairness and proportionality, including:*
- i. *whether banks and other financial service providers have used the legal system to pressure customers into accepting settlements that did not reflect their legal rights,*

In our case the BANK chose to facilitate the settlement through MEDIATION- they engaged the banks Solicitor which meant that we had to engage a Solicitor to act for us, as the Bank chose the Mediator who was a Barrister problems were:

- Our Legal representation for the preparation and Mediation process and trying to still resolve the Banks offers has come to \$30,000 this is a cost that should never have been created by the BANK
- Pressure was put on us at Mediation by the BANK, the Mediator (banks Representative) and our own solicitor to take the offer by saying
 - * Best one you will get
 - * Will cost you over \$200,000 to go to Court,
 - * You want to get on with your lives
 - * *NO Advise by any party that our next step could be AFCA - they were all only pressuring us to take the offer:*
- Banks Legal representative opening statement at mediation was:
 - When we are making this offer we have to consider the BANK EMPLOYEES – they all have families to feed and we have to make sure that they can pay them so they can feed their families:
Intimidation tactics and the Mediator tolerated it not saying anything, nor did our Solicitor.
(was this to humiliate us further, or trying to minimise our situation they caused)
- Mediation did not raise nor discuss issues that were primary to the claim which had not been finalised between the parties – and any offer the BANK was to put forward
- We felt intimidated, powerless in a process they BANK had set up -which was not necessary
- The Bank only had a set amount to offer as compensation and was not budging on it
- No consideration was given to our offers and how we came to throughs figures
- We didn't know what our legal rights were
- We were not told what the Mediation process was about by the BANK or what would be involved
- We felt overwhelmed and confused, we didn't even leave the mediation session with the Banks offers written down – it took a week and a further \$1500 to get written offers so I could process them
- The Bank chose a Barrister who had already one two cases that know of for the BANK - relating to same claims
- Bank nor Barrister disclosed Conflict of interest to us the Borrowers, was all done thorough Solicitors, they all disregarded the correct protocols by advising us directly and getting us to sign off that we were happy to use this mediator: (we found out by accident about a week later) We would not have used this mediator: Did not feel that she was impartial at mediation – and would not have though she could have been
- Solicitors holding themselves out as being experienced in these matters who are not
- Borrowers being exposed to further costs, that lead to no clear assessment of their rights or what the claims quantum should be
- Borrowers forced into settlement offers that do not truly reflect the Quantum of the claim
- Solicitors not acting in the best interest of the Borrowers – they get paid regardless of the outcome
- and the do not interact with us: Only through Solicitors: People – they needed to go through
- Exposure to loss by incompetent Legal representation by Borrowers Solicitors taking advantage of venerable Borrowers
- Solicitors making communicating with the other side without concern for the Borrowers in maters that they have no knowledge of the content and have not given consent to the Solicitors to do so

ii. *whether banks and other financial service providers have pursued legal claims against customers despite being aware of misconduct by their own officers or employees that may mitigate those claims, and*

The BANK was on Notice that we had a claim for Maladministration, and was rejected through the Customer relation Department initially: We were refused Hardship whilst we were trying to resolve the matters.

- BANK commenced recovery action calling in all our loans even though the Investment house was not in arrears at the time: Later claiming all money clauses to justify the actions:
- Refused to give us access to Superannuation to pay arrears at the time around \$10,000
- Bullied me saying that if I didn't hand in the keys to the property they would foreclose on us
- Pressured my with my stress condition until I agreed to sell our home – Later I withdraw this
- Then out of desperation I told them I would have to sell another Investment home I had for my retirement (now 65) cash flow to pay the arrears – cost me loss of rental and costs

BANK with Held the Details about the ADVOCATE department, which was an avenue I could have raised our complaint with at the time:

I found out about this by accident searching the web one day – we put the claim into that department and all actions have stopped:

iii. *whether banks generally have behaved in a way that meets community standards when dealing with consumers trying to exercise their legal rights;*

NO - The BANKS are not transparent enough they hold back information. Not releasing documents under disclosure re how loans are processed and the Serviceability sheets etc.

They continually do not disclose the departments or processes that are available to you within the BANK to have the matters determined

They then do not follow protocol or procedures and make up the rules as they go along: EG in our case the Advocate had 45 days to resolve the matter and give a determination, that was in July last year?

iii. *the ability of people in conflict with a large financial institution to attain affordable, quality legal advice and representation,*

Our Example – Because the BANK chose to use mediation to settle the matter instead of simply giving a determination by the Advocate Department as require by regulations - they could have given us the option in writing-

BUT because they are not trustworthy nor transparent – they chose to go through Legal channels on an “Without Prejudiced Bases” which means - have they admitted liability ?

It cost us \$30,000 to participate in the process unknowing what it was going to costs up when we agreed to it

The Legal Advice we get is ineffective, inefficient because no one is really conversant with the LAWS, Regulation, and Codes and HOW they should be applied to each individual case:

SOLUTION; Community group specialising in these matters to be set up – or grants given to Legal FIRMS that can special in these matters and work with Borrowers who know that the fees will be paid by the BANK when the case are successfully resolved:

AS Consumers we are disparate for the CMPENTANT people to be available to help US:

Yes each case is evaluated on the merits – but their common threads, LENT MONEY should not so what is the compensation – how do you simply work that compensation out – that’s the problem in how it is worked out.

b. *the accessibility and appropriateness of the Australian Financial Complaints Authority (AFCA) as an alternative forum for resolving disputes including:*

- AFCA I fear that they will *not act on the Powers* they have, mainly cancelling DEBT that relates to UNJUST CONTRACTS -
- They do not fairly nor transparently give details to consumers to work out loss and quaintly
- You are told to read past cases to guide you!!!! Well that would be ok if they were consistent in the resolving of disputes – they are not
- Depending on how the rules are applied by each consultant to how the quantum is worked out
- They are supposed to be unbiased but they rely on the BANKS representation and where it is easy to do so they go with the BANK EG:

- One case I know of personally the applicant borrowed under ABN Young man 20 recovering from Bike accident got his payout decided to buy a home for his security, the Bank approved his application under an ABN (which he never used but had had for 2 YEARS)
 - He managed to pay for the home for 3 years from payout money and friends renting with him, was never able to work, lost his home under hardship, requested the FOIO documents to try and see if he had a claim BANK refused on three occasions say documents lost:
 - Applied to FOS within the 6 years time frame of him realising his loss, sale of house under hardship,
 - FOS asked BANK response Bank said he should have known he couldn't afford it when he made his first payment on the loan:
 - FOS agreed and dismissed the claim without investigation -- is that FAIR
 - BUT after he continued to complain to BANKS advocate department they have come up with all sorts of stuff, and said they would compensate him for his PAIN with \$3000 why would you do that without investigating -
- CONSUMERS Are still getting the run around by the BANKS and doesn't matter what rules and regulations are put in place they are only there to serve the dishonest, as the innocent cannot afford to pursue the justice as justice is BIAS:

Regards