

Commonwealth Bank Group

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Reply
GPO Box 2719
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Ms Toni Matulick
Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra
ACT 2600

Dear Ms Matulick,

Re: Questions on Notice from Commonwealth Bank Appearance before Inquiry on 2 December 2015 in Canberra

On 24 December 2015 we provided responses to a number of Questions on Notice which were taken when David Craig and I appeared before the Committee on 2 December.

We now provide answers to questions 1, 2, 4, 6 and 8. The answers to Questions 3, 7, 9 and 10 have not changed since our 24 December 2015 response.

If you or members of the Committee would like to discuss our response do not hesitate to contact me on [redacted] or Euan Robertson on [redacted].

Yours sincerely,

David Cohen
Group Executive Group Corporate Affairs
Commonwealth Bank of Australia

QoN 1

Senator O'Neill: *For the matters raised in submissions and the evidence that we received from Mr Boman, Mr Cavasinni, Mr Eriksson, Mr Evanian, Mr Lavis, Mr O'Brien, Mr Power and Mr and Mrs Schaumburg, could I ask the Commonwealth Bank to provide for us these items: a time line and evidence documenting the bank's attempt to assist these customers from the time that it first became apparent that they had financial difficulties.*

This question is to be addressed as part of our separate submission to the Committee relating to these eight customer cases which will be provided shortly.

Other matters raised by Senator O'Neill during the hearing at this time are addressed by our response to the Committee's written Questions on Notice of 1 December 2015.

QoN 2:

Mr RUDDOCK: *That is page 3 of your letter of 1 December, and I was reading your observations that there was no specific communication with your bank, because you were not a party; however, there is extensive dialogue evident. I do not know what 'dialogue' means. I do not know what demands were made. I do not know whether dialogue was ringing up to say, 'What's the weather like?' Can you give us the diary entries that evidence the discussions and the dates that you allege in relation to officers of, presumably, Bankwest and BoSI?*

Mr Cohen: *We can certainly provide that to you; yes. I do not have it right here now.*

Senator O'NEILL: *Are there any file notes?*

Mr RUDDOCK: *It says that there is an extensive dialogue between Bankwest and—*

Mr Cohen: *Yes, there is. We can certainly provide that. It might be of interest to you to know that in the court proceedings between Bankwest and Mr O'Brien, Mr O'Brien swore an affidavit which set out at length his various phone calls and correspondence with Bankwest. We can certainly provide you with our records—*

A separate submission to the Committee relating to Question 1 above provides additional detail regarding Mr O'Brien's loan and his contact with Bankwest.

Correspondence related to:

- extension of Mr O'Brien's loan expiry date from November to January;
- progress of discussions with Essque;
- funding of fit out costs;
- Mr O'Brien's request that Commonwealth Bank repay debt which was owed to Westpac;
- progress of Mr O'Brien's request for extension of funds before the Bankwest credit committee; and
- the expiry of Mr O'Brien's facility and options for him to refinance or restore his loan.

Any suggestion that Mr O'Brien received little contact from Bankwest between November 2008 and April 2009 is at odds with his own evidence before the Supreme Court of New South Wales in which he described the following contact from Bankwest between December 2008 and April 2009:

- On or around 16 December 2008 – telephone call with _____ of Bankwest
- Exchange of emails with _____ and _____ of Bankwest between 16 December 2008 and 13 January 2009
- 19 December 2008 – letter from Bankwest agreeing to vary the terms of the Construction Facility Agreement, including increasing the amount available by \$2.3 million and extending the termination date to 15 January 2009
- 23 December 2008 – further letter from Bankwest agreeing to a further \$750,000 in funding
- 15 January 2009 – telephone call with _____
- On or around 3 February 2009 – telephone call with _____
- On or around 6 February 2009 – _____, _____ of Bankwest and Brad Imeson of BOSI met with the CEO of Essque
- On or around 8 February 2009 – telephone call with _____
- On or around 10 February 2009 – letter from _____
- On or around 11 February 2009 – meeting with _____ and representatives from BOSI
- In or around early to mid-February – Bankwest instructed O'Brien to engage specialists in hotel resorts, architects and quantity surveyors
- On or around 13 February 2009 – telephone call with _____ followed by email from _____

- On or around 16 February 2009 – telephone call with
- On or around 18 February 2009 – telephone call with
- On or around 24 February 2009 – meeting with
- On or around 25 February 2009 – telephone call with
- On or around 6 March 2009 – telephone call with
- On or around 6 March 2009 – telephone call with _____ of Bankwest
- On or around 11 March 2009 – _____ attends meeting and talks with Mr O'Brien separately
- On or around 13 March 2009 – email from
- On or around 14 March 2009 – telephone call with
- On or around 24 March 2009 – emails from _____ to CEO of Essque
- On or around 1 April 2009 – telephone call from
- On or around 2 April 2009 – meeting with _____ and
- On or around 7 April 2009 – notice of termination and letter of demand issued from Bankwest solicitors
- On or around 8 April 2009– letter from

While we do not agree with Mr O'Brien's characterisation of the nature of the contact between the parties in his evidence to the Supreme Court, it nevertheless shows a pattern of regular phone and email correspondence.

QoN3:

Senator O'NEILL: *Was there any transfer then of those people from outside the bank's receivers into the bank to help your credit assessment team? Did any of those people become investigative accountants and receivers—did they complete the circle? They go in and then go out.*

Mr Cohen: *The individual person travelling through that loop? I do not know that, to be honest. We could look into it for you—I do not know it. I would say that it is quite feasible that one of the external firms who might have provided a secondee might also have been appointed as a receiver at some stage. That is highly feasible, given that we were taking secondees from some of the large firms.*

From a review of our records, we have identified approximately 40 secondees from investigative accountants and receivers who worked in Commonwealth Bank or Bankwest in the period between February 2010 to November 2015.

These secondees are not engaged as receivers, nor do they have the authority to make the decision to appoint either receivers or investigative accountants in their work for CBA.

We do not believe that any secondee returned to their firm and was subsequently appointed as an investigative accountant or receiver to a customer case they had dealt with during a secondment.

QoN4:

CHAIR: *If this is an accounting exercise and does not impact on the businesses concerned and is, purely, for your provisioning can you clarify whether you had a number of reasonably senior managers, in the Sydney area, resign, around that period, in protest?*

Mr Cohen: *In Bankwest?*

CHAIR: *Yes.*

Mr Cohen: *I do not know the answer to that question. We can look into it for you, though.*

As we advised in the hearing, the email to which this question refers (page 29 of the appendix to Mr Hall's original submission which we have already illustrated is replete with errors) is an email from a third party (external to Bankwest) to other third parties (also external to Bankwest).

As an email about Bankwest between two third parties external to Bankwest, the email is an unreliable source about events inside Bankwest at the time. The information below demonstrates that unreliability.

We have reviewed departures from Bankwest's business banking team in Sydney in the period from April to June 2010 (these dates cover the time that Project Magellan was taking place; we note that the email in question is dated 7 July 2010).

No staff resigned from Bankwest business banking team in Sydney who would be considered a "senior manager" during this period.

Two mid-level managers resigned during this period: one was a Business Development Manager; the other was a Relationship Manager.

A further seven Assistant Relationship Managers at Bankwest business banking in Sydney resigned during this period but we consider it unlikely these junior staff members would be the employees referred to in the email.

QoN5:

Senator O'NEILL: *How many investigative accountants did you employ during this period?*

Mr Cohen: *I do not know the answer to that. We can take that on notice and give you the answer.*

Senator O'NEILL: *A rough number: thousands or hundreds?*

Mr Cohen: *Do you mean the number of appointments, the number of times an investigative accountant—I would imagine it is in the hundreds, at a guess.*

Bankwest did not record the number of investigative accountants appointed in 2008/9 or 2009/10. To determine this would require the retrieval of several hundred of hardcopy files.

We have performed this task for the 95 cases referred to in our letter to the Committee of 16 December 2015. These 95 cases consist of: 36 Bankwest customers who have provided a submission or appeared before the Parliamentary Joint Committee in relation to this inquiry and 59 additional customers specified in the Ernst & Young Expert Determination Report dated 7 July 2009.

Of these cases, investigative accountants were appointed in 37 of the 95 matters (12 out of 36 submitters to the inquiry, 25 out of 59 Ernst & Young cases).

In financial years 2008/9 and 2009/10 we have advised the Committee that Bankwest appointed 182 receivers. We expect that the number of investigative accountants appointed would be of a similar order.

We note that the appointment of an investigative accountant does not automatically lead to a receivership, nor is an investigative accountant a prerequisite for a receivership.

QoN6:

Senator O'NEILL: *In what percentage of cases did it end well for the customer?*

Mr Cohen: *I could not tell you, off the top of my head. We would have to go and review the files to do that.*

The purpose of an investigative accountant is to better understand the financial position of the customer and to identify options which would improve that position. It is not in the customer or the bank's interest for an investigative accountant to simply recommend receivership.

We acknowledge some witnesses believe that once an investigative accountant is appointed it is inevitable that the business will end in receivership. The evidence below supports the understanding that receiverships eventuate in a minority of cases.

We asked four of the largest investigative accountants and receivers (Ferrier Hodgson, Korda Mentha, Grant Thornton and McGrath Nicol) to provide data for the last two to three years. For each case where they were engaged as an investigative account, we asked them to identify how often they were subsequently engaged as a receiver for that business.

As the table below illustrates, a receivership did not eventuate in over 80 per cent of cases across the industry for this two to three year period (it is acknowledged that this period reflects a time of below average impaired loans).

	Appointed as investigative accountants	Subsequently appointed as receivers	Percent where the firm was <u>not</u> appointed as a receiver
Commonwealth Bank (incl Bankwest)	80	9	89%
Other financiers	344	50	85%
Total	424	59	86%

Notes:

- Ferrier Hodgson provided calendar year data for 2013 to 2015
- McGrathNicol provided data for financial years 2013/4 and 2014/5
- Grant Thornton provided data for the last 2.5 years
- Korda Mentha provided calendar year data for 2013 to November 2015
- One firm provided data for Commonwealth Bank and Bankwest only
- We estimate that these four firms would account for over 50 per cent of the investigative accountant appointments by Commonwealth Bank and Bankwest.
- Just as the appointment of an investigative accountant does not automatically lead to a receivership, nor is an investigative accountant a prerequisite for a receivership

QoN7:

Mr RUDDOCK: *Perhaps if you would take it on notice, because I suspect the way in which you have dealt with it encourages me to look at what more robust approach we should take.*

The Committee's deliberations around the circumstances of Bankwest customers who have appeared before the inquiry concentrate on three core questions:

1. *Is there any evidence of a conspiracy around the purchase of Bankwest? Did Commonwealth Bank have an incentive to impair loans to reduce the purchase price or gain some other benefit?*

Clearly, as the evidence shows, the answer is no.

As we said in our opening statement:

- Commonwealth Bank could not reduce the purchase price payable to HBOS by impairing customer loans and nor did it attempt to;
- We repaid all of the wholesale funding – again, there was no clawback possible;
- There were no warranty claims in relation to impaired loans;
- There was no loan guarantee from the British government; and
- There was no capital benefit from impairing loans.

2. *Putting aside the conspiracy theory and the lack of any motivation to do so, did Bankwest take action against customers who were appropriately servicing their loans?*

Clearly the answer is also, no.

As we have responded previously, we have examined 36 of the submissions provided to the Committee. Of those 36, the customer was in monetary default in 33 cases. Of the remaining three:

- in one case no enforcement action was taken against the customer;
- in one case the customer appointed a voluntary administrator to the company; and
- in the other the customer invited Bankwest to appoint a receiver.

3. *Accepting that there was no conspiracy and that customers were failing to meet obligations to Bankwest, did Bankwest act too quickly or fail to adequately work with customers?*

Again, the answer is clearly 'no'.

We have examined 28 of the submissions provided to the Committee in relation to Bankwest where a receiver was appointed. The average number of days between the first default evident and the appointment of receivers was 536; the median number of days was 397 days.

Around 40 dissatisfied Bankwest customers have provided submissions to the inquiry out of around 26,000 commercial customers. Claims about the scale of receiverships among Bankwest customers have been shown to have been fabricated.

If the parliamentary inquiry produces evidence of any customer being mistreated, as we have stated previously we are very willing to consider that: to date, despite having made our willingness clear to individual customers and a number of politicians we have seen no such evidence.

QoN8:

CHAIR: *Would you provide on notice—perhaps over the last two-year period; let's limit it—how many disputes you have had that have started out with a legal process, how many have actually gone to court and how many have been settled out of court?*

Mr Cohen: *In respect of commercial loans or generally?*

CHAIR: *Commercial loans.*

To respond to this question we have contacted two of the law firms which would be used most commonly by Commonwealth Bank and Bankwest in legal proceedings relating to commercial loans. These firms were Gadens and Turks Legal.

We estimate that these firms would undertake over 50 per cent of legal engagements by number relating to commercial loans on behalf of the Commonwealth Bank Group.

These firms were asked to report on legal proceedings commenced by Commonwealth Bank (including Bankwest) against commercial customers for commercial loans for the period since 1 July 2013.

Between 1 July 2013 and December 2015 these firms reported 376 commercial legal proceedings commenced.

Of those 376 cases, 162 were resolved by agreement, 139 were determined by a court or tribunal and 52 remain ongoing.

In a further 23 cases the matter was discontinued (for example because the borrower declared bankruptcy).

QoN9:

Senator WILLIAMS: Yes, I will do that. Mr Craig or Mr Cohen: 66 in 2008-09; 116 in 2009-10; can you give me the figures from the 2010-11 financial year?

Mr Cohen: Not at the moment. We are still doing the count. This chart that David Craig has just mentioned will not talk to receiverships per se but will talk to losses incurred in later years.

We have completed this exercise for financial years 2010-11 and 2011-12 and the results are presented below.

The Committee will note that at its peak in 2010-11, Bankwest appointed receivers to 189 entities. This is less than the 20 per cent of all receiverships that Mr Hall claimed Bankwest appointed in 2008-9 (alone). As we described in our response to his submission, Mr Hall has added figures together which are not mutually exclusive. This has resulted in double and triple counting of figures.

The Committee will also note that the peak receivership appointments in 2010-11 occurred well after the Ernst & Young report had settled the purchase price of Bankwest. Further the 'lag' from the peak of the financial crisis illustrates the time that Bankwest provided customers to work through their financial difficulties.

	2008-9	2009-10	2010-11	2011-12
Bankwest Receivership Appointments	66	116	189	90
Total Industry Receivership Appointments (ASIC)	1,487	1,223	1,348	1,248
Bankwest percentage of all receivership appointments	4.4%	9.5%	14.0%	7.2%
Bankwest share of business lending	5.0%	5.0%	4.3%	3.7%

QoN10:

Senator O'NEILL: *How could there be such an incredible difference from the figures that the bank provided to us this evening? You would have seen the evidence that Mr Hall was basing his estimations on. Can you explain that discrepancy for the committee?*

Mr Cohen: *It is very hard for me to know exactly how Mr Hall was counting. What we surmise is that Mr Hall was double- and triple-counting. What it appears he has done is he has gone to ASIC records of receivers and he has looked at a cumulative total for 2008, a cumulative for 2009 and a cumulative total for 2010, and it appears he has added them together. Now, that is all we can surmise. But the figures that we have given you are actual figures from going and doing a count of our files—actually going through each file manually—to determine how many receivers were appointed. So, it is 66 and 116.*

Further to our answer above, we provide the following additional information. There appear to be at least two critical errors (if not more) which lead to Mr Hall's fabricated number of 1,025. We refer to Table 9 on page 35 of his original submission.

Error 1: As we described in our response to his submission, Mr Hall has added figures together which are not mutually exclusive. This has resulted in double and triple counting of figures.

Error 2: Mr Hall has confused the concepts of impairment and receiverships. Impairment occurs when a bank believes that it will not be repaid its funds in full and will make a financial loss on the loan. It is an accounting concept entirely separate from appointing a receiver. As we have stated in evidence, many loans which are impaired are resolved without the need for a receiver.