

SUBMISSION TO THE ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

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This submission is designed to inform the Royal Commission with respect to policy matters based on both my experience as an Executor for a complex estate, negative experiences with a range of corporate and financial institutions and a complaint resolved via the financial services ombudsman. Whilst the complaint was resolved via the ombudsman pathway, the experience raised numerous policy and procedural matters which I consider require serious examination by this commission, particularly in light of the case studies it studied.

A much publicised case study for the Royal Commission was the incident whereby a major bank charged a deceased estate for financial planning services not provided.

While there was just consternation regarding the executor's diligence in that instance, I believe this is only part of the issue and masks some very concerning aspects of the system as they operate with respect to deceased estates. Given my experience as an Executor, I was surprised that people were surprised at this incident.

In my own experience, the standards, practices and behaviours of corporate and financial institutions that apply to deceased estates are consistently and disappointingly appalling. To me it appears that deceased estates are fair game for all and sundry, including but not limited to banks, and it seems as though this is accepted, so no wonder bank salespeople thought it reasonable to charge fees. One solicitor remarked to my own, "what do you care so much for anyway, it's not your money". I had anticipated and expected much better from the relevant institutions and professionals touching deceased estates in this country. Certainly life is for the living, but just the same the systems, procedures and policies in place for those who are ageing, newly deceased, and those entrusted with caring in these situations needs to be better.

The following paper sets out specific practices and policies I encountered as an Executor, and the resulting policy issues I believe should be considered by the royal commission in making their final report to government.

Item 1: Change in Account Type and Reduction in interest paid at death of an account holder

Background

The bank of my late father had a policy whereby on formal notification of death, the account automatically changed from an interest bearing account to a noninterest paying account. That this material change would occur was identified in the terms and conditions of the account and is a practice that directly contradicts a convention of deceased estates, which is to maintain the status quo.

According to the bank, the fact that my father had died meant he no longer met the requirements of the account, which was to be aged over 55. Even as written, this was cryptic, since my father had been aged over 55, it was just that he had passed away.

ONCE IDENTIFIED, an issue in and of itself, so disgusted was I with this policy that I complained to the financial ombudsman and the matter was resolved. However, it raised a range of policy issues.

Policy and regulatory matters

Given this incident, I would like the Royal Commission to make recommendations with respect to these matters:

- Who judges what is fair, transparent and reasonable regarding these banking products. That a bank could automatically reduce an interest rate on death in such a backhanded way does not appear fair and just to me.
- Was such an account change that is counter to the convention of status quo for deceased estates fair, legal?
- My complaint was resolved via the ombudsman, but what is the authority and obligation of the financial and credit ombudsman to nevertheless identify to ASIC with respect to such matters? It appeared as though the ombudsman had much discretion in this. That is, where a complaint goes via the ombudsman rather than ASIC, what governs how the system treats and acts on the complaint?
- What is the optimal regulatory and reporting interface between ASIC and the financial ombudsman? This was not clear to me much at all, I did ask the ombudsman whether ASIC would be notified of the issues involved with my complaint. The answer was uncertain and my faith in the public authorities with oversight of all of this greatly diminished (even before the outcomes much emerged from the Royal Commission).
- How does the financial ombudsman contribute to getting systemic learnings and combat the appalling culture that surrounds these financial institutions.
- Does a bank self report such matters to ASIC if the ombudsman is not involved?
- The nature of this incident was such that identifying the policy and interest rate had changed was problematic, particularly where the recipient of bank statements changes. It was a smaller bank, but surely my father was not the only bank customer and account holder to pass away and have then had the interest rate reduced through this policy change. I have a residual concern that other consumers may likewise been duped without having realised. What is and should be the role of the ombudsman versus ASIC to ensure that the bank took action in this regard? It appeared as though the ombudsman had

much discretion in this. Are the KPIs for the ombudsman driving the right behaviour in this regard?

- ASIC is getting much of the flack policy wise, but where is the ombudsman in this and are their own powers and terms of reference sufficient to also support ASIC and the standards of oversight expected by the Australian community?
- Perhaps my case study is unusual, but it was the initial behaviour and attitude regarding the product and the interface with a deceased estate that also emerged to be common to other case studies. The above bank was a much smaller bank. So I also ask, is it just the big banks? How do authorities know the other smaller banks are not likewise masking their own issues. In addition, it appeared that the ombudsman tended to rely on quantity of issues in order to focus their resources. This concerned me too, since in this example, even identifying the issue of the account change itself was a challenge, so might have gone unnoticed by most. How do the authorities know others haven't likewise been deceived and not noticed? Keep in mind at the point of death, even for simple estates, executors are dealing with a myriad of paperwork. The nature of the documentation from the bank meant I only identified it through a deep dive, and one even the accountant acknowledged may have been difficult to identify and the solicitor acknowledged that the consequences of the change were not clear.
- Between ASIC and the ombudsman, the pathway needs to be clearer for consumers who might have concerns about how a bank or other financial institution is operating? (This was not clear to me and required persistence)

Item 2. Poor provision of account information for a deceased account

That banks charged for services not received was appalling, and while executors play a role, it is too simplistic to lie fault just with the executor. The standard of documentation and communication with respect to account changes for deceased estates is variable across the industry. I have had to deal with several institutions and some did this well, others were terrible in the information provided and their processes.

The bank I dealt with failed to provide a statement listing each transaction as a matter of course for the account in which the account was closed. The standard practice was to provide a letter only identifying the closing balance for the month in which the account closed. (Transactions can still occur on frozen accounts eg rates. Executors may need to account for this.) A transaction listing for the closing month had to be requested from the bank and at first it was to be at the estate's expense. Moreover, because the account concerned had been closed, initially it was a requirement that I attend the branch and pay cash (in the vicinity of \$30) for the required bank statement. All this to get something that should have been provided as a matter of course. So whilst I accept that executors and beneficiaries should be diligent in checking account statements as has been touted, this end to end experience suggests this not without its difficulties and because of the systems and procedures of this bank, the burden was all on the Executor and more onerous than it should be.

Issues Raised

- It should be standard practice to issue a transaction showing each transaction for every month of the account. The accountability for executors can be fantastically onerous.
- Increasingly transactions come via EFTPOS and direct means. Many of the transaction descriptions on bank statements are increasingly meaningless on bank statements. There should be some regulation on this too to assist those managing these accounts.

Other matters

- Similarly, banks should accept deposits into frozen accounts as a matter of course. The bank did not accept and bank a nursing home bond cheque because one was in the name of the estate of and the other in the name of my deceased father. This was contrary to the convention used for other cheques, including share deposits. The outcome was that I had a large cheque I could not bank with my father's own bank; as Executor I did not wish these funds to be interest free until probate was awarded. (Aren't financial institutions there to provide financial services?)
- A share registry automatically selling a small parcel of shares without authority and disregarding correspondence regarding the share portfolio for the estate

3. Performance measurement regimes and accountabilities

- Does government need to mandate KPIs and a reporting regime if the banking institutions will not do this appropriately through self regulation? In corporate Australia and the business performance literature, it is well known that what gets measured gets done. The impacts of sale incentives and KPIs should have been understood by banks. How is it that the boards of these organisations with the resources available to them allowed the KPIs and bonuses to become so imbalanced. Should there be a standard set of KPIs that help drive appropriate behaviour? It does not appear that delivering to the stakeholder bottom line has been a sufficient motivator for the banks.