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## **TRANSCRIPT OF PROCEEDINGS**

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O/N H-896300

**THE HONOURABLE K. HAYNE AC QC, Commissioner**

**IN THE MATTER OF A ROYAL COMMISSION  
INTO MISCONDUCT IN THE BANKING, SUPERANNUATION  
AND FINANCIAL SERVICES INDUSTRY**

**MELBOURNE**

**9.45 AM, FRIDAY, 25 MAY 2018**

**Continued from 24.5.18**

**DAY 24**

**MS R. ORR QC appears with MR M. HODGE QC, MR A. DINELLI and MS E. DIAS  
as Counsel Assisting with MS C. SCHNEIDER**

**MR M. DARKE SC appears with MS P. NESKOVICIN and MS A. SMITH for  
Westpac**

**MS A. MITCHELMORE appears with MR D. HUME for Suncorp**

MS ORR: Commissioner, the next witness in this case study is Mr Alastair Welsh.

5 <ALASTAIR DEREK DAWSON WELSH, ON FORMER AFFIRMATION  
[9.45 am]

<EXAMINATION-IN-CHIEF BY MR DARKE

10 THE COMMISSIONER: Mr Welsh, the oath which was administered, now some days ago, still persists?---Thank you.

Yes.

15 MR DARKE: Thank you, Commissioner. Mr Welsh, have you received a summons to attend the Commission hearing today?---Yes, I have.

Do you have the original of that summons with you?---Yes, I do.

20 I tender that summons.

THE COMMISSIONER: Exhibit 3.58, summons to Mr Welsh.

25 **EXHIBIT #3.58 SUMMONS TO MR WELSH**

MR DARKE: Mr Welsh, have you prepared a statement in relation to Rubric 3-10?---Yes.

30

Do you have any corrections to make to that statement?---No, I don't.

Are the contents of the statements true and correct?---Yes.

35 Do you have that statement with you?---Yes, I do.

I tender the statement.

40 THE COMMISSIONER: The statement and its exhibits in response to Rubric 3-10 is exhibit 3.59.

**EXHIBIT #3.59 STATEMENT OF MR WELSH AND ITS EXHIBITS IN RESPONSE TO RUBRIC 3-10**

45

MR DARKE: May it please the Commission.

THE COMMISSIONER: Thank you, Mr Darke. Yes, Ms Orr.

5

<CROSS-EXAMINATION BY MS ORR

[9.46 am]

10 MS ORR: Mr Welsh, we heard earlier in the week that you are the general manager of commercial banking at Westpac Business Banking; is that right?---Yes, it is.

Thank you. Now, did you hear the evidence from Mr Bradley Wallis in relation to two Westpac loans entered into by his company, Thir, yesterday?---Yes, I did.

15 And the loans were entered into with Westpac's Bank of Melbourne division; is that right?---Yes.

20 And in your statement you've addressed the circumstances surrounding the entry into and operation of these loans that were made to Mr Wallis' company?---Yes.

And, in order to do so, you tell us in your statement that you examined the files and records held by Westpac and the Bank of Melbourne in relation to those loans?---Yes.

25 And you're familiar with those loans and the events that are the subject of Mr Wallis' evidence?---Yes.

Now, the business bank division of Westpac operates under five different brands; is that right?---Yes.

30

To assist you, I think - - -?---Yes, yes.

35 - - - they are St George, Bank of South Australia, Bank of Melbourne, and Capital Finance Australia. And across each of those brands Westpac offers business loans through a couple of different channels; is that right?---Yes.

One channel is direct to Westpac through a Westpac branch or a business banking centre, online or through the call centre?---Yes.

40 And the other is through Westpac's accredited brokers or aggregators?---Yes.

And a third channel is through intermediary referrers, such as tax advisers and accountants?---Yes.

45 And in the 12 month period up to the 30<sup>th</sup> – I'm sorry, up to 20 September 2017 you tell us in your statement that approximately 36 per cent of Westpac's business lending came through a third party referral?---Yes.

And the balance came directly through one of your direct customer contact points?---Yes.

5 Now, where a Westpac business loan is originated through a third party channel, such as through a broker or a referrer, the third party's involvement in the loan origination process is limited to making the initial application or referral; is that right?---In some circumstances, yes.

10 When it's not limited to that, what else does that person do?---The introducers typically would help the client prepare information – sorry, help the client gather the information they need to do by asking the right questions to help them prepare the – the package of documents - - -

15 Yes?--- - - - they might want to give to the – to the – to the banker.

And after that package of documents is submitted, do they have any further involvement in the loan approval process?---They may – they have no involvement in the loan approval process because that's the banker's accountability to – to write the submission. They may have involvement in providing information and be the conduit between the – the bank and also the client.

20 So who has the discussions with the customer about their needs and objectives, and verifies the information and does the customer serviceability assessments?---So the banker is accountable for having the conversation with the customers, having accountability for writing the credit submission, and for doing the serviceability.

And verifying the information provided?---And verifying the information provided.

30 Okay. Thank you. And in your statement you've given evidence of Westpac's processes and policies that applied in 2016 to the assessment and approval of loan applications made by SME customers for loans of less than \$1 million; is that right?---Yes.

35 And you tell us that aside from some streamlining and amendments in response to the introduction of the unfair contract terms legislation, and some guidelines published by the ABA, the processes and policies that applied in 2016 remain much the same today?---Yes.

40 So under those policies and processes, when a new business customer first approaches Westpac, either through a third party, broker or referrer, or direct to Westpac, unless they are what you call a micro SME customer, which means they have lending needs of less than \$250,000, you give them a dedicated business banker; is that right?---Yes.

45 And these business bankers are sometimes known as relationship managers or account managers?---Yes.

And for all Westpac business banking, including lending that comes through the third party channel, it's the Westpac business banker that engages in the direct discussions with the customer about their lending needs and verifies their information and, as you say, undertakes the serviceability assessment?---Yes.

5

Okay. And the relationship between the business banker and the customer, you tell us in your statement, is an important feature of Westpac's handling of applications for business loans?---Yes.

10 The business banker's role, you tell us, is to get to know the customer, to get to know the customer's business, to get to know the industry within which the customer's business operates, and to work closely with the customer to establish appropriate credit strategies that meet the customer's needs?---Yes.

15 And you've exhibited to your statement a copy of Westpac's policy document which sets out the roles and responsibilities of business bankers in relation to business lending?---Yes.

20 And that's exhibit 8 to your statement, WBC.400.020.7999. And if we turn to the second page of that – I'm sorry, the third page, 8001, we see there the confirmation of what you've been telling us, which is that these people, who are described in this particular document as account managers, are required by your policies, first dot point under account managers:

25 *To understand the customer's business and needs before offering finance.*

And to:

*Verify the integrity of the customer and the information provided.*

30

?---Yes.

And fifth dot point down we see that they're required to:

35 *Understand the loan purpose, clearance source and structure the exposure correctly.*

?---Yes.

40 And sixth dot point:

*In supporting the proposal –*

45 they have to be satisfied that they know the customer, understand their business and that there is no doubt about their integrity?---Yes.

And as I understand your evidence, where a customer is introduced to the bank by a third party, all of these requirements still apply?---Yes.

5 The business banker is required to meet directly with the customer; is that right?---Yes.

And the business banker's required by your policies to personally inspect the business premises?---Yes.

10 And the business banker is also required by your business bank third party introductions policy to attest to the fact that they have met the customer and visited their business premises, and include that attestation with the credit submission. Would you like me to show you the document that contains that requirement? It's the second exhibit - - -?---Thank you.

15 - - - to your statement. WBC.400.046.8857. You recall this document, Mr Welsh?---Yes, I do. Sorry, what tab number was it?

20 It's tab 2 in your statement?---Tab 2. Thank you. Thank you.

If we turn to 8863 within that document?---Mmm.

25 We see a table that tells us about the role of the account manager at business bank?---Yes.

And do you see the fifth dot point down:

*Include an attestation within the credit submission that customer has been met and where applicable, business premises visited, using one of the following.*

30 Two forms of attestation are provided?---Yes. Thank you.

So you accept that that's a requirement of your policies?---Yes, I do.

35 Thank you. Now, the loans from the Bank of Melbourne to Mr Wallis' company were referred to the bank through a broker, weren't they?---Yes, they were.

40 And the broker submitted the loan application forms to the bank on behalf of the corporate entity applying for the loans?---Yes.

And in the application form for the Byabarra loan, you heard the evidence about the two different loans, the refinancing of the Port Macquarie investment property and the loan to acquire the Byabarra property for the business?---Yes.

45 So I will call that the Byabarra loan?---Byabarra.

In the application form for the Byabarra loan, Mr and Mrs Wallis indicated that the loan was sought for a business purpose?---Yes.

5 Now, can I just show you that commercial finance application form which I took Mr Wallis to yesterday. It's the first exhibit to your statement. WBC.403.001.0989. I'm sorry, it's the first exhibit to Mr Wallis' statement. It will come up on the screen, Mr Welsh?---Thank you.

10 I'm sure you've seen this document before?---Yes, I have.

Thank you. Now, you saw yesterday that I took Mr Wallis to this document, and in particular, to the second page of this document, 0990, showing that what Mr and Mrs Wallis sought was a commercial loan in the sum of \$560,000?---Yes.

15 And the purpose of the loan was as articulated by them at the bottom of this page, to purchase this property with a going concern restaurant, a five star B and B. You recall that evidence?---Yes, I do.

20 And that was the information provided by Mr and Mrs Wallis through the broker?---Yes.

25 So from the time that the bank received this application form it was on notice that the loan that Mr and Mrs Wallis were seeking through their corporate entity had a business purpose, being to fund the purchase of a property with a restaurant and a B and B operating on it?---Yes, that's correct.

Now, the bank also received a projected profit and loss statement from Mr Wallis for the business?---Yes.

30 And the Bank of Melbourne gave Mr and Mrs Wallis a dedicated business banker to deal with the application; is that right?---Yes.

And that was Mr Athanasopoulos?---Yes.

35 And Mr Athanasopoulos also dealt with their application to refinance the Port Macquarie property?---Yes.

And did Mr Athanasopoulos ever meet with Mr or Mrs Wallis?---I don't know that.

40 You heard Mr Wallis' evidence about this yesterday that they did not meet?---That's the only evidence that I have from -- from Mr Wallis, but I don't -- I don't - - -

No evidence to suggest to the contrary?---Yes, thank you.

45 So let's assume, based on Mr Wallis' evidence, that there was no meeting between Mr and Mrs Wallis and Mr Athanasopoulos. If that's the case, why not?---I don't know.

That's something that you looked into when you were reviewing the file and preparing your statement?---Yes, it was.

5 And can you offer any explanation for why this business banker didn't meet with the clients?---No, I can't.

The business premises were in New South Wales; is that right?---That is correct.

10 And Mr Athanasopoulos was located in Victoria?---Yes.

Is that unusual, to have the business banker in one State and the business that's the subject of the loan in another State?---It does happen, but it's not – it's not normal, but customers do, at times, make investments in other States. So that is – that is correct.

15 Do you accept, based on your review of the file, that that was something that was picked up later within the Bank of Melbourne as an irregularity with this file?---Can you just repeat the question?

20 Do you accept that later in the piece it was picked up within Westpac that this was an irregularity - - -

THE COMMISSIONER: What's the "this", Ms Orr, I think is the question?

25 MS ORR: This is that the location of the business banker was in Victoria and the location of the business was in another State, in New South Wales?---Yes, I do accept that. There was a note, I recall, in the file that said the client has moved to Queensland and the file should move, which is our normal practice if a – if a client has moved and they're no longer Melbourne based, then the file should move to a  
30 banker that's closer to the client, because it wouldn't make sense to – to have the Melbourne banker still looking after that client.

35 What about the fact that the business property was in New South Wales. Before they moved to the Gold Coast the business that was the subject of this loan was in a different State, wasn't it?---That is correct.

It was a requirement, as you've acknowledged, of your policies that Mr Athanasopoulos inspect those premises?---Yes.

40 Okay. Do you know what Mr Athanasopoulos did to get to know Mr and Mrs Wallis, their business, the industry within which their business would operate, and their needs generally?---Sorry, could you – quite a few questions there.

45 One question - - -?---One question.

- - - with a few elements?---Yes.

Do you know what Mr Athanasopoulos did to get to know Mr and Mrs Wallis – we will do it in separate parts?---Thank you.

Do you know what he did to - - -?---No, I don't.

5

Do you know if he did anything to get to know Mr and Mrs Wallis?---Well, I heard from Mr Wallis there have been a number of emails and a number of conversations, but other than that, I don't know.

10 And do you know what he did to get to know their business?---No, I don't.

And do you know what he did to get to know the industry within which their business would operate?---No, I don't.

15 Okay. In your statement you explain that one of the things that the business banker is required to do is to make a determination as to whether a business customer can meet their financial obligations under the proposed loan arrangements; is that right?---Yes, it is.

20 And you say that in making that assessment, the business banker is expected to take into account a range of factors, including the customer's credit history, their management expertise, their vulnerability to external conditions such as economic and political trends, technological changes, and environmental risk. That's the list of matters that you include in your statement?---Yes.

25

And they're expected to take those matters into account because Westpac's policies require these matters to be taken into account in order to determine whether the business customer is likely to meet their financial obligations under the loan?---Yes.

30 Okay. And after the business banker has completed this assessment of their ability to meet their financial obligations under the loan they prepare a credit submission; is that right?---Yes.

And that's provided to a credit officer?---Yes.

35

And the credit submission has to include information about the proposed facilities, the proposed securities, the purpose of the loan, and any key risks identified in connection with the business?---Yes.

40 Okay. Westpac and Bank of Melbourne's approval procedure provides that for some loans of less than \$500,000, the business banker themselves can approve the loan if they hold certain accreditations. Do you recall - - -?---Yes.

- - - telling us that in your statement?---Yes, I do.

45

And you also tell us in your statement that the average business loan in Westpac is less than \$500,000?---Yes.

So what kinds of accreditations does a business banker need to hold in order to be able to improve – approve themselves, without going to a credit officer – a loan of less than 500,000?---There’s a – varying degrees of accreditation to the various levels, and I outlined that in – in one of my statements. The important one here that I  
5 would like to make is that for new business the accreditation levels for a new client, the accreditation levels are – are very low. And I’ve – from memory, I think they may have – a banker at this level probably would have had no – no credit approval authority to make a call on this deal, because it was a new client, a new to Bank of Melbourne client.

10 Do I understand you to mean by that, when you say the accreditation levels are very low, you mean that it is unusual for a business banker to hold an accreditation that would permit the business banker to approve lending to a new customer; is that right?---Sorry, I – the accreditation levels are not low. That was poor language by  
15 me. What I was trying to say is the threshold – the dollar threshold for the accreditation levels are – are lower for new business. I think, from memory, it would – it would be zero for a new to Westpac or Bank of Melbourne business. So they would have had no credit approval - - -

20 I see?--- - - - authority - - -

I see?--- - - - to be able to make this loan without going to a credit officer.

25 I see?---Because a new to bank, as we call it, business.

Is that the case for any new business customer, that it needs to go – a credit submission needs to be made to a credit officer; is that right?---Yes.

30 And that’s what happened here with Mr and Mrs Wallis and their loan?---Yes.

Okay. They were new business customers?---Yes.

35 Okay. Now, in the situation where a business banker does have an accreditation that allows approval of a loan for less than \$500,000, the loan is submitted, you tell us in your statement, to an automated credit management system?---Mmm.

Which can auto-approve the loan, subject to certain parameters?---Yes.

40 In what circumstances can the loan be auto-approved?---So auto-approved we look at a range of different measures, and typically we call it “customer in good standing”.

45 Yes?---So typically, you’re looking for if there had been any overdawns, if there has been any default notices. You’re looking to make sure that their transactional history shows no abnormalities or anything that would bring to your concern. And then the – that would be the auto-decisioning. And that decision engine is running in the background all the time.

So depending on the amount of money sought in the loan, and the credit history and other matters you've just mentioned, it may be that the loan can be approved via an automatic process?---Sorry, I think I'm bundling a couple of things here. There is the auto-decisioning which is reviewing the file – sorry, reviewing the client's connection as you – all the time. It's always working in the background. So that's one thing. When a client asks for new money - - -

Yes?--- - - - or some increased facilities, then a banker would look at how much that is. If the customer is in good standing, that will be one of the requirements where they would apply their credit approval limit, their threshold where they may – may be able to do that. And it's typically for what we would call top-ups. Someone might say I want a, "50K overdraft to increase on my \$500,000 limit." If the customer looks like they're in good shape and everything looks normal to – we would allow the banker to, under their credit approval authority, train to the right level to be able to – to approve that.

So is that different to what you describe in paragraph 52 of your statement which is about an auto-approval, or is that what you've just described?---That would be if it was an existing customer.

I see?---It could be in that situation.

I see. So when the customer is a new business customer, the credit submission has to be put to the credit officer?---Yes.

And the use of a separate credit officer is an important internal control to ensure that only those businesses that meet Westpac's policy requirements have loans approved?---Yes.

And is it also to ensure that Westpac and the Bank of Melbourne uphold their obligation under the Code of Banking Practice to exercise the care and skill of a diligent and prudent banker when assessing and approving business loan applications?---It is. It's a two-step process. I think it's less because of the Code of Banking Practice, but getting the origination right is the – is the critical part, because it's a new to bank customer. That's where you've got to find out all the information and get that right.

Yes?---In my experience, if you don't get the origination right, that's – that's where it becomes a lot more challenging in the future. It's important to nail that original accreditation, and part of our controls and processes you get an independent second line to make sure you sign that off.

And getting the origination right, as you describe it, is consistent with exercising the care and skill of a diligent and prudent banker, isn't it?---Yes, it is.

Yes. Okay. Now, Mr Athanasopoulos referred a credit submission to a credit officer for the two loans that were sought by Mr Wallis' company, didn't he?---Yes, he did.

And he had some difficulties in getting the Byabarra loan approved by the credit officer, didn't he?---He had some difficulty.

5 Some difficulties. The difficulties were connected with a valuation of the Byabarra property. Have you seen references to this in the documents, Mr Welsh?---I don't think – yes, I have. And what I'm hesitating, I don't think it was with a conversation with a credit officer. It was a conversation with someone else.

10 Okay. But that was part of the process of trying to approve the loan; is that right?---Yes, it was.

Yes. And issues came up with a valuation of the Byabarra property?---That is correct.

15 Because the Byabarra property was going to be used as security for the loan, wasn't it?---Yes.

20 And Westpac and Bank of Melbourne's policies required that any property that was going to be used as security for a loan was to be valued prior to the loan being approved?---Yes.

Okay. And a property that was going to be used as security for a loan could be either a residential property or a commercial property?---Yes.

25 And the bank distinguishes between residential security properties and commercial security properties because of the risks and characteristics of residential properties as opposed to commercial properties?---Yes.

30 Those risks are different; is that right?---Yes, they are.

35 In what way are those risks different for residential and commercial properties?---Well, the main way it's different on a commercial property is the – analysis shows that there's more circularity in the commercial property. So the prices can go up and down more. That's probably the first thing. The second thing is typically they would be for a special purpose, a commercial property might be for – in this case it was a bed and breakfast, in other cases it may be for a manufacturing business. So it's more specialised. Therefore, the potential for a buyer is on a readily market is limited. Probably the last point is a commercial property you see a lot more capital investment – capital expenditure to go in because you have to keep it  
40 upgraded to operate it at the right level. So they're the three things that mean that it has a different risk profile.

45 I see. And the Bank of Melbourne will generally only lend up to 65 per cent of the value of a commercial property against which a loan is secured, whereas it will lend up to 80 per cent of the value of a residential property against which a loan is secured; is that right?---That is right.

And are they fairly standard loan LVRs, loan to value ratios, across the industry?---Yes, they are described as – they would be described as standard.

5 Yes. Now, could I take you to an exhibit to your statement, exhibit 16, which is WBC.400.020.8408. This is Westpac and the Bank of Melbourne’s policy at the relevant time, in 2016, in relation to the valuation of securities; is that right?---Mmm.

10 And if we turn to 8410, we see under the heading Valuation Requirements that:

*A security valuation is undertaken for all assets held or offered as security.*

?---Yes.

15 So the requirement to get a valuation is mandatory?---Mmm.

Is that right?---Yes.

20 Yes. And at 8411 we see a table setting out the acceptable valuation methods within Westpac and the Bank of Melbourne; is that right?---Yes.

And perhaps if we could have the next page brought up on the screen next to that page so we can see the entirety of the acceptable methods?---Thank you.

25 The first valuation method listed is to use the contract of sale?---Yes.

And that’s the purchase price listed in the contract of sale?---Yes.

30 But this document tells us that the circumstances in which a valuation is permitted to be carried out using the contract of sale are quite limited?---Yes.

Did you want to turn to this in your statement - - -?---No, no.

35 - - - as well? You have it there, Mr Welsh?---No, thank you.

And is that because the use of a contract of sale to value of property is the least robust of these available valuation methods?---It’s – yes, that’s one of the reasons.

40 Okay. Are there other reasons?---It’s also risk-based call, for ones – if the loan is smaller on that, then you want to try and apply a risk-based assessment on that. So using a contract of sale is – for a smaller loan, we deem as appropriate.

45 And that’s consistent with what we see in the right-hand column, Parameters and Requirements, because we see there that a valuation based on the contract of sale is only permitted where the purchase price is \$600,000 or less.

?---Yes.

- And it's not permitted if the business customer is new to the bank. Do you see that down towards the end of the dot points there?---Yes.
- 5 And the more robust valuation methods which are appropriate for new customers and for customers seeking to acquire a property with a purchase price in excess of \$600,000 are the other types listed here, which include a panel valuer's report?---Yes.
- 10 Okay. Now, would a diligent, prudent and skilled lender only rely on a contract of sale as the sole valuation method for an offered security in circumstances where the customer was known to the bank, had an established financial history, and the purchase price didn't exceed the monetary threshold?---Yes.
- 15 Okay. Now here, for Mr and Mrs Wallis, the purchase price was in excess of 600,000, wasn't it?---Yes, it was.
- And Mr and Mrs Wallis and their corporate entity were not existing customers of Westpac?---That is correct.
- 20 Okay. So Westpac and the Bank of Melbourne's policy didn't permit a valuation of their security property via the contract of sale method?---Yes. Under this policy. But I do recall reading a Bank of Melbourne policy that the threshold was higher, but I can't recall where that is, sorry.
- 25 This is what you've given us, Mr Welsh - - -?---Yes, yes.
- - - as the applicable valuation policy at the time. Do you say now that there's a different one?---I seem to recall something from a Bank of Melbourne policy, but I can't recall where that is, and I can't recall whether I've got that in here.
- 30 All right. Within Westpac, you accept the proposition I put to you?---Yes.
- Is that right?---Yes, I do.
- 35 And you have some reservations about whether there might be another document that has a different monetary threshold for the Bank of Melbourne?---Yes, that's correct.
- You can't recall what that monetary threshold is?---I think it was as high as 2 million.
- 40 Okay. And you don't have a document that shows us that?---I can't recall in my bundle whether I do.
- 45 Okay. And - - -?---Apologies.
- - - you have told us in your statement that this was the applicable valuation policy?---Yes.

Do you now think that might not be correct?---I – I recall seeing something that the Bank of Melbourne could go – could have – at a higher limit.

All right. I just - - -?---Yes.

5

Just to be fair, I just want to find the part of your statement where you deal with this - - -?---Okay.

- - - exhibit. Paragraph 56. You have given us chapters of the business credit manual?---Yes.

10

Relating to the assessment and approval of applications for business lending under \$1 million?---Mmm.

15 And there's a list there in paragraph 56 of those policies and they include the document I've just taken you to. Do you say that there's another document that should be in that list, Mr Welsh?---I think they – they – sorry. I think there was another policy for Bank of Melbourne that I had – that I had read. I didn't – I looked at the Bank of Melbourne policy and not this one, so I may have – and it looks like I've excluded that.

20

You have?---Yes.

25 Because under subparagraph (i), what you've given us for valuations is exhibit 16?---It is, indeed.

The document I've taken you to?---Yes.

30 Okay. I want to look at what happened with the valuation of the Byabarra property?---Mmm.

Can I take you to a document which is WBC.403.002.7400. Have you seen this document before, Mr Welsh?---Yes, I have.

35 So it's a screenshot provided to the Commission by Westpac of a sequence of events relating to the valuation of the Byabarra property; is that right?---Yes, it is.

40 And we see there, if we deal with this chronologically and start at the bottom of the table, we see that on 4 May 2016, a few days after the loan documents were submitted by the broker, you might recall on 30 April 2016, we see that on 4 May one of the bank's panel valuers, Taylor Byrne, is asked to value the property. Do you see there?---Yes, I do.

Continuing:

45

*Except for accepted valuation.*

?---Yes, I do.

5 And the following day, 5 May 2016, Ms Banning, a representative of the valuer, advises that they can't value the property because it requires a commercial valuation?---Yes.

10 And therefore they needed a fee to conduct it; is that right? Or is that the fee that they're charging to get to the point of telling you that it needs a commercial valuation?---I hope not.

15 So do you understand that to be a request for payment of a fee in order for them to conduct a commercial valuation?---Yes.

15 Okay. And about a week later, on 11 May, we see an entry from Mr Athanasopoulos asking that:

*...the valuation be allowed to proceed ASAP, settlement is due in June.*

20 And on the same day, another entry from Mr Athanasopoulos where he notes that the property is:

*Fundamentally a rural home and has a small shop –*

25 which I assume means “shop”, unless you know something about the property that I don't, Mr Welsh?---No, I don't.

Continuing:

30 *Please note this property is fundamentally a rural home and has a small shop on it. It is not a commercial property.*

Do you see that entry, Mr Welsh?---I do. I do.

35 Do you know why Mr Athanasopoulos made that entry?---No, I don't.

Well, it was a commercial property, wasn't it?---In my view it was, yes.

40 And Mr Athanasopoulos knew from the documents submitted by Mr and Mrs Wallis that they were buying it not only to live there, but to take over the business that was currently being operated on the property?---Sorry, can you just - - -

45 That was – so that was apparent to Mr Athanasopoulos from the documents submitted by Mr and Mrs Wallis, that Mr and Mrs Wallis were buying this property not only to live there, but to take over the business that was currently operating on the property?---That's not my understanding.

That's not your understanding?---Correct.

Could you explain that?---The first part of your statement there, that it was the understanding that they were going to live there - - -

Yes?--- - - - I didn't see evidence from the file that they were going to live there.

5

I see. So you agree with me that it was apparent from the documents that they submitted that they intended to take over the business operating on the property?---Yes.

10 Okay. I see. And that was why they had applied for a business loan?---Yes.

But you didn't see documents recording that they were going to reside on the property?---Yes.

15 That's the distinction you're making?---Yes, thank you.

I see. Okay. Then if we return to this document we see that on the same day as Mr Athanasopoulos' second entry, Ms Banning, the representative of the valuer says:

20 *This is a commercial property. The purchase price is not of a residential nature and includes value attributed to the business. Property is known as Blue Poles Café Bed and Breakfast and Residence.*

25 So that was the communication back from the valuer in response to Mr Athanasopoulos' residential characterisation of the property?---Yes.

Okay. Now, I want to pause there in the chronology and go to another document. And before I do that, I will tender this document, Commissioner.

30 THE COMMISSIONER: Exhibit 3.60, screenshot events concerning Byabarra property, 4 to 17 May '16, WBC.403.002.7400.

35 **EXHIBIT #3.60 SCREENSHOT EVENTS CONCERNING BYABARRA PROPERTY, 4 TO 17 MAY 2016 (WBC.403.002.7400)**

40 MS ORR: Now, just before that document goes off the screen, Mr Welsh, I will just ask you to note the last entry we've looked at is the entry dated 11 May 2016, because I am about to show you a document a few days later.

THE COMMISSIONER: Sorry last?

45 MS ORR: Last entry I have taken Mr Welsh to is 11 May. I will come back to this document - - -

THE COMMISSIONER: Yes.

MS ORR: - - - because there's an intervening event between 11 May and 17 May.  
Can I ask that you now be shown WBC.403.006.2322. So this is an email chain  
from a few days later on 16 May 2016. It's an email that shows us on the first page  
an email from Mr Athanasopoulos to Mr Damien Brander within the Bank of  
5 Melbourne. And there is a second page which perhaps we could have brought up on  
the screen with this page. We will start with that email, which is the first in the  
chain. So on 16 May 2016 on the right-hand side of the screen, Mr Welsh?---Yes.

10 We see an email from a person who was the broker who had put the documents in on  
Mr and Mrs Wallis' behalf; is that right?---That's my understanding.

Yes. And the broker was writing to Mr Athanasopoulos:

15 *Hi, Arthur. Can we please get a move on this one. NAB has given them  
conditional approval of 492K on a commercial loan for the full purchase price,  
ie, the property and the business combined contracts.*

?---Yes.

20 Okay. So that's conditional approval for a commercial loan, we see from that email.  
And that comes through on 16 May. And then in response we see that Mr  
Athanasopoulos sends the email on the left-hand side of the page to Mr Brander; is  
that right?---Yes, it is.

25 Okay. And Mr Brander was Mr Athanasopoulos' superior; is that right?---Yes.

He was his regional general manager?---Yes.

30 Okay. And Mr Athanasopoulos told Mr Brander:

*I'm having difficulties with getting this deal approved.*

Do you see that at the top?---Yes, I do.

35 And in the second paragraph he refers to the main issues and the second of those is:

*Valuers struggling with valuation as the rural/residential zoned property is  
being considered as commercial as it also has a small shop on the far corner of  
the property.*

40

Do you see that?---Yes, I do.

45 I want to put to you that's a somewhat misleading statement, isn't it, because the  
valuer had told Westpac a few days before that this was a commercial property with  
a purchase price that included value attributed to the business that was being  
operated on the property?---Yes.

So do you accept that that statement by Mr Athanasopoulos is misleading to Mr Brander?---Yes.

5 And we see from this email that Mr Athanasopoulos was troubled by the conditional approval that had been given to these potential clients by NAB?---Yes.

We see him saying to Mr Brander:

10 *The NAB has offered the client as attached and conditioned it, whilst we try to dot our Is and cross our Ts before we even know if the deal will be approved, and in fact the client set-up is actually required. The clients need to know if we can approve and I cannot do that until a val is done and the ID issue –*

which was an unrelated issue –

15 *was completed.*

He goes on to say:

20 *Wouldn't it be wise to take our competitors out of the market, so we can proceed with getting everything we need from the client prior to settlement rather than leave things open? Some brokers are shaking their heads stating, "Why will their clients go through all that process without an approval?"*

25 He goes on to say:

*What can we do quickly –*

This is down towards the bottom of the page:

30 *What can we do quickly before we miss out on a good deal and furthermore, can we action this to ensure smarter actions are taken to get our offers out to the clients and brokers before our competitors get in front of us?*

35 ?---Yes, I see that.

It's fair to say that Mr Athanasopoulos was very keen to get this deal done?---That's my read as well.

40 And that was because, wasn't it, he stood to gain financially if this loan was approved?---He may have, yes.

His regional manager, Mr Brander, would have also stood to gain financially if the loan was approved?---He may have, yes.

45 The approval of this loan impacted on the eligibility of both Mr Athanasopoulos and Mr Brander for their bonuses, didn't it?---It would have been a contributor.

Yes. And could I ask – I will tender that document and show you another.

THE COMMISSIONER: Exhibit 3.61, emails between Athanasopoulos, Brander and others, 16 May '16, WBC.403.006.2322.

5

**EXHIBIT #3.61 EMAILS BETWEEN ATHANASOPOULOS, BRANDER AND OTHERS DATED 16/05/2016 (WBC.403.006.2322)**

10

MS ORR: Could I ask that you be shown WBC.107.003.1089. Have you seen this document before, Mr Welsh?---No. I haven't, actually.

15 It's a document annexed to one of the statements that Ms Separovich has made to this Commission?---Okay.

Have you seen those statements?---Yes. Yes, I have.

20 So this is the second exhibit to Ms Separovich's statement - - -?---Thank you.

- - - relative to this - - -?---Yes, I have. I just didn't recognise the front.

25 Okay. Now, it's a copy of the KPIs that applied to local business managers from the period 1 October 2015 to 30 September 2016?---Yes.

And Mr Athanasopoulos was a local business manager?---Yes.

30 And that period covered by this document covers the time when Mr Athanasopoulos was trying to get this deal done?---Yes, it does.

Okay. Can I just ask that you turn to 1090. And we see there the scorecard that applied to Mr Athanasopoulos. We see there that sales and financial targets made up 70 per cent of Mr Athanasopoulos' KPIs?---Yes, that's correct.

35 And they included 40 per cent for revenue growth?---Yes.

And that was the growth in revenue over Mr Athanasopoulos' total portfolio?---Yes.

40 20 per cent for asset growth?---Yes.

The growth in asset balances over his total portfolio?---Yes.

And 10 per cent for deposit growth?---Yes.

45 So these were the financial gateways that needed to be satisfied for local business managers such as Mr Athanasopoulos to participate in Westpac's variable reward program?---These were the – sorry, can you just repeat the question? I think - - -

Were they the financial gateways that needed to be satisfied by local business managers like Mr Athanasopoulos to participate in Westpac's variable reward program?---These were the financial metrics they had to achieve, yes.

5 Yes?---Correct.

The language I have used is taken from paragraph 6 of Ms Separovich's statement?---I'm familiar with it, broadly.

10 Yes. All right. If we look at the final column of this table, we see at this time in order to meet these requirements, Mr Athanasopoulos was required to meet 90 per cent of his revenue growth target. Do you see that - - -?---I do.

- - - on the right-hand side?---Yes.

15

And he had to meet 80 per cent of his asset growth and deposit growth targets?---Yes.

20 So you accept, do you not, Mr Welsh, that at the time Mr Athanasopoulos was trying to get this loan approved, his KPIs were heavily weighted towards his financial performance?---His KPIs were weighted to his financial performance, yes.

Thank you. And you accept they applied to Mr Athanasopoulos?---I do indeed.

25 Yes. I don't need to tender that document, because it is part of Ms Separovich's statement. I want to understand, Mr Welsh, if business bankers have target markets?---If business bankers have target - - -

Target markets?---Can you give me a little – your reference to that?

30

Yes?---Please.

I will show you a document in which that term is used and you can help me try and understand what that means?---Thank you.

35

The document is WBC.403.002.0398. Now, do you see at the bottom of the page there, this is an email chain between various people - - -?---Yes.

40 - - - within the Bank of Melbourne who are discussing the potential approval of this loan. Do you see an email from Lorraine Handley at the bottom of the page 20 May 2016:

*Hi Maria. Blast approved.*

45 Blast is – well, perhaps you can explain. What is Blast?---Blast is the origination system for the St George group, which includes Bank of Melbourne.

Continuing:

*Blast approved. Regards Lorraine. Proposal is within target market for this business banker.*

5

?---So that would be referring to the level of debt.

And what does that mean? What is the level of debt that was Mr Athanasopoulos' target market?---So in my statement I talked about the fact that the over 250 lending up to the 3 million lending - - -

10

Yes?--- - - - is the target market for the LBBs or LBMs for the Bank of Melbourne.

I see?---So that would have been the type of – the debt criteria for the type of client that – that he would have been looking at.

15

So does that mean that Mr Athanasopoulos and other people at his level were expected or encouraged to sell loan products for loans within that bracket?---They were accredited to that level.

20

I see?---And it was their market that they were targeted towards.

I see. I understand. Could I tender that document, Commissioner.

25 THE COMMISSIONER: Emails between Handley, O'Toole and others, 20 May '16, WBC.403.002.0398 is exhibit 3.62.

30 **EXHIBIT #3.62 EMAILS BETWEEN HANDLEY, O'TOOLE AND OTHERS DATED 20/05/2016 (WBC.403.002.0398)**

MS ORR: Now, in the email we looked at earlier from Mr Athanasopoulos to Mr Brander in which Mr Athanasopoulos was putting the case to get this deal done, Mr Athanasopoulos in his role at that time would have known that if the property was characterised as a commercial property, the bank would only lend up to 65 per cent of the value of the property; is that right?---That is right.

35

Whereas if it was characterised as a residential property, the bank would lend up to 80 per cent?---That is correct.

40

Because he wanted to get the deal done and ensure the clients didn't take the other deal with NAB, he pressed, despite the information from the valuer for this property to be characterised as a residential property?---Yes.

45

Okay?---That's my view.

5 All right. Can I return to the screenshot that we had before, just to see the final steps in the valuation process. That was WBC.403.002.7400. That email we had been looking at was 16 May, Mr Welsh. And if we return to the final part of this table, we see on 17 May, the day after, the request for a valuation was cancelled on the basis that the valuation was:

*Not proceeding through this channel.*

10 Is that right?---Yes.

And I want to put to you that this was done to get around the valuer's characterisation of the property as being a commercial property and avoid the limit on the amount that the bank could offer to lend if it was valued as a commercial property?---That's -- yes, yes, I think that is correct.

15 And in your statement you tell us that the loan was instead assessed based on a valuation using the sale price in the contract of sale?---Yes.

20 And that was \$645,000?---Yes.

And that was done even though the criteria for using that valuation method in the policy were not met?---Yes.

25 Okay. Westpac proceeded to value the property contrary to its own policy. That was a risky thing to do, wasn't it?---Westpac -- sorry, our banker here made the wrong call and they -- in my view, this should have been -- this was a commercial property and this should have been valued as a commercial property. I'm not sure what else went on in the conversations, but this is a factual record of -- of that period. I'm not sure what else may have gone on in discussions there.

30 Yes. I see. So you accept that he made the wrong call?---I do.

Yes?---Yes, I do.

35 I see. All right. Can we turn to the loan documentation briefly, which is exhibited to your statement as exhibit 30. WBC.403.002.0149. All I want to ask you about this document, Mr Welsh, is you've read this document and you understand that the loan was secured -- this is the Port Macquarie loan that I'm taking you to at the moment, not the Byabarra loan. I will come to the Byabarra one. The Port Macquarie loan was secured by the Port Macquarie investment property?---Yes.

40 And each of Mr and Mrs Wallis signed a guarantee and an indemnity for that loan?---They did.

45 If we turn then to the Byabarra loan agreement, which is exhibit 32 to your statement, we see that the amount that was offered to Mr and Mrs Wallis for the Byabarra purchase was \$516,000?---Yes.

It was secured over the Byabarra property?---Yes.

And, again, there were guarantees and indemnities signed by Mr and Mrs Wallis?---Yes.

5

Can you offer any explanation for why this was a residential loan agreement offer?---Yes.

10

And what's the explanation?---So the purpose of the loan was for business purpose.

Yes?---And that was well documented. Under our policies, you are allowed to have a consumer loan for business purpose with residential security. So there's three steps there.

15

I understand?---The central one is, yes, it is a business purpose, consumer loan with residential property.

So you say this was an available way of doing this deal to use a residential loan agreement?---It was.

20

But the wrong call that the banker made was in the valuation of the security property; is that right?---Yes, that is right.

25

Now, in proceeding on the basis that the security property was residential rather than commercial?---Yes, that's correct.

Okay. And that the immediate consequence of that was on the amount of money that the bank was prepared to lend to Mr and Mrs Wallis?---Yes.

30

Okay. Now, I want to take you to events after the loan is approved. In June 2017

---

THE COMMISSIONER: Can I just go back to – you said that the purpose of the loan was a business purpose?---Yes.

35

You said that you can use a consumer loan for business purposes with residential security?---Yes.

40

What was the residential security in this transaction?---The residential security in this transaction would have been the Byabarra property. If that had – as in my view, that is a commercial property, therefore, you – you would not have been able to have a consumer loan, because you can't have a consumer loan for business purposes with commercial property. So that – it would have been documented as a business loan – a business purpose, therefore a business loan with commercial property security.

45

MS ORR: Yes?---And the 65 per cent LVR should have applied.

I am grateful to you, Commissioner, for clarifying that because I think your evidence now is this wasn't an available way of dealing with this loan. It should have been a business loan secured by the commercial property?---In my view it should have, yes.

5 Yes, I see?---Yes, it's my evidence that that's the case.

Yes, thank you?---Because the bank had picked that it was – said that it was a residential. That's why this option was applied.

10 So this was - - -?---But it was not.

This was a second misstep on the part of the business banker; is that right?---It's the same misstep.

15 I see?---I think. Because – because of the classification that it was residential, that led to the – the consumer loan option for business purposes being available.

Which should not have been available?---Which should not have been. 100 per cent right.

20

I understand. Thank you?---Yes.

And can I now turn to the events after the loan. I was taking you to June 2017, which is about 12 months in - - -?---Yes.

25

- - - to the life of the loan. The Bank of Melbourne received a request from Mr Wallis to revalue the two security properties, the Port Macquarie investment property - - -?---Yes.

30 - - - and the Byabarra property?---Yes.

Is that right?---Yes.

35 And you heard Mr Wallis' evidence that they did this because they were considering borrowing against any additional equity that had accrued to buy a home on the Gold Coast?---Yes.

Okay. Now, in your statement at paragraph 102, do you see there – sorry, there we are – at 102 you tell us that:

40

*In the course of arranging for the revaluation, a member of the credit team identified that the Byabarra property had been characterised as a residential property where in fact it was considered likely that it should have been characterised as commercial.*

45

?---Yes.

Well, the effect of your evidence today is that the bank was aware at the time that it advanced the loan that the Byabarra property was unlikely to be characterised as residential and should have been characterised as commercial from the start. Do you accept that?---Yes, I do.

5 Because the bank's own panel valuer had told the bank this?---Yes.

So why have you chosen to express it this way in your statement?---So – sorry, can you just – why have I – just – I'm just confused with the question.

10 I just want to be clear in case there's any ambiguity about the way you've expressed this paragraph. I want to be clear as to whether or not you accept that the bank knew, back at the origination stage, that this was a commercial property and ought to have been valued as such?---I understand where you're going.

15 Do you agree with that?---So what I was – what our banker did at the original origination was they – as you highlighted through this – had a disagreement with the valuer. The banker knew that the valuer was saying it was a commercial property.

20 Yes?---That is correct.

Yes?---The banker had some narrative there to say that it was a residential property and there was some narrative there that said they had spoken to CMT, which is the – I understand to be the consumer mortgage team – sorry, the credit mortgage team.

25 So the banker was aware. You are correct. I'm not sure who else was aware at that point in time.

Was Mr Brander aware?---Mr Brander was aware there was a debate going on.

30 Was he aware that it ought to have been characterised as a commercial property?---I don't know what he – I don't - - -

What about the credit officer?---I don't believe the – from my read of the file, I don't believe the credit officer was.

35 I see?---When I read the credit memo that you referred to earlier, I – it implied there was going to be an evaluation sought, and it wasn't clear – it wasn't disclosed there to a credit officer that this was a commercial property and they were – that – yes, that it was a commercial property. So I don't believe the credit officer was aware.

40 All right?---So I am just trying to track down who the bank is in this situation.

Yes. So the person dealing directly with the customer was aware?---Yes, in my view.

45

Yes. Okay. Now, having received this request for a revaluation of the security properties, the bank tried to order a valuation for both of the properties; is that right?---Yes.

5 And just before I move to that, if I could just have a moment. Could I just ask you – I just want to take up a point from the evidence you’ve just given, Mr Welsh, from the notes involving the credit officer. Can I ask that you be shown a document which is FOS.0015.0001.0502. I think – the distinction I want to draw here when this document comes up, Mr Welsh, is I think you were going to say that you don’t know  
10 to whom within the bank, beyond Mr Athanasopoulos, the view of the valuer was communicated; is that right?---That is right.

But I want to put to you that that wasn’t the only way of the people – for the people within the bank to understand that this was a business property that ought to have  
15 been valued as the business property. Do you accept that?---Let’s work on that hypothesis.

Yes. Well, let’s start in that hypothesis with the documents that were submitted to the bank - - -?---Okay.

20 - - - by Mr and Mrs Wallis, all of which referred to the business that they intended to operate on the property?---Yes. Yes.

They would have all gone to the credit officer?---Not necessarily.

25 So what would the credit officer have got?---The credit officer would have got the submission from the – the banker.

Okay?---With the banker’s evidence.

30 All right. So this document I have on the screen at the moment is from the Bank of Melbourne system. It’s a summary of internal notes on the system. And if we turn to 0510, we see partway down the page a recommendation created by Maria O’Toole. And we saw Maria O’Toole’s name on one of the other emails. Do you recall that, Mr Welsh?---Yes, I do.  
35

And there’s an entry here about the nature of the business. And do you see the second paragraph down:

40 *The two have purchased an investment property in 2015 and have offered bank opportunity to refinance this and support their new purchase. They hope to buy the property –*

now, this is the Byabarra property –

45 *which has a tenantable house and separate shop. Land is zoned residential.*

?---Yes.

So this is the sort of information that the credit team had. They were aware of the commercial enterprise on the property, weren't they?---Yes.

5

Okay. Would they have been surprised that this was packaged up as a residential loan?---The – I think the important part here that they might have read through is that “land is zoned residential”. So although it has a business on it, it's zoned residential. And I think that's where the – the error may have - - -

10

What does that - - -?--- - - - occurred.

- - - to do with anything, Mr Welsh? You can operate a business, can you not - - -?---Yes, you can.

15

On property that's zoned residential?---Yes, you can.

The important thing is they were being told about the intent of the borrowers to operate a business?---Yes. So this – so that goes to the business purpose. There was no doubt that this was a business purpose.

20

Yes. And the credit officer would have known that the security property was the property from which the business would be operated. That was clear to the credit officer, wasn't it?---Yes, yes.

25

Okay. So would it have surprised the credit officer to see this packaged as a residential loan?---Not necessarily.

Why not?---Because – well, maybe if I take the other loan that we've got, the Port Macquarie. That was a – that was still a business purpose loan and it was a house. So it was residential. So that was clearer. Correct? In this one, depending on how much information they had of how much was business and how much was – was residential, the – I – my view of the file is that they could have thought that because it was land as zoned residential, that a residential security was appropriate. In my view, it wasn't appropriate. And with more information, my pick is the credit officer would have made the call that it should have been a commercial property. I think the information was scant.

35

Okay. And if that was the call they made – and we don't know – that was the wrong call?---Agreed. Yes.

40

Yes. All right. I tender that document, Commissioner.

THE COMMISSIONER: What will I describe it as, Ms Orr?

45

MS ORR: It's internal Westpac notes. I don't know if Mr Welsh has another way of explaining what it is. Generated from the Westpac credit – is it a credit system?---I think so. Thank you.

5 THE COMMISSIONER: Internal notes Westpac or Bank of Melbourne, Mr Welsh, is it - - -?---Bank of Mel.

Internal notes, Bank of Melbourne. FOS.0015.0001.0502, exhibit 3.63.

10

**EXHIBIT #3.63 INTERNAL NOTES, BANK OF MELBOURNE  
(FOS.0015.0001.0502)**

15 MS ORR: I want to come back to the bank's attempts to value the property after Mr Wallis' request for a revaluation in June 2017. Can I ask that you be shown WBC.403.007.1202. And can I show you the email at the bottom of the page from Mei Zhao to Mr Wallis on 10 July:

20 *Hi Brad. I've just ordered the valuation through residential channel for your property Byabarra. Since this property is used as security for your home loan, our system only allows me to order residential valuation. If the valuer comes back to us advising they couldn't not complete resi valuation due to business on site, will let you know what to do next.*

25

So Ms Zhao already seemed concerned the valuation - - -?---Yes.

- - - wouldn't happen because of the business on the property and therefore being a commercial property?---Correct.

30

And then if we stay on the page the next email up the chain is an email from Ms Zhao to Mr Wallis later that day and, as Ms Zhao anticipated, the valuer has requested that the valuation be cancelled as it needs to be done as a commercial valuation. And she says she will get three quotes for the valuation through the commercial channel and let Mr Wallis determine which one to go for?---Yes.

35

I tender that document, Commissioner.

40 THE COMMISSIONER: Emails between Mei Zhao and Wallis, 10 July '17 WBC.403.007.1202, exhibit 3.64.

**EXHIBIT #3.64 EMAILS BETWEEN MEI ZHAO AND WALLIS DATED  
10/07/2017 (WBC.403.007.1202)**

45

MS ORR: So the effect of this was Mr Wallis would need to pay for the valuation because the bank doesn't pay for commercial valuations; is that right?---That is correct.

5 And how much does a commercial valuation tend to cost?---It varies.

We see - - -?---We saw earlier that there was a 3000 - - -

10 There was a reference to 1000 plus - - -?---1000 plus.

- - - in one of the emails?---Yes.

15 And Mr Wallis elected not to pay for a commercial valuation. You heard his evidence about that - - -?---I did.

- - - yesterday?---Yes, I did.

20 And we've seen that the result of the conduct earlier in the piece at the origination stage was that the Bank of Melbourne had lent Mr Wallis and Mrs Wallis 80 per cent of the contract of sale value over the Byabarra property. That was the 516; is that right?---Correct.

25 And if it had been assessed as a commercial security it would have only lent 65 per cent, which would be \$419,000?---That's correct.

Okay. So that meant that there was a security shortfall on the loan of just under \$100,000?---Yes.

30 And in August 2017 there was a discussion within the bank about the need to change the loan product for the Byabarra property from a home loan to a business loan, and address that security shortfall?---Yes.

35 Okay. And if I could take you to WBC.403.001.1118. These are another set of internal Bank of Melbourne notes. Have you seen this document before, Mr Welsh?---Yes, I have.

40 Yes. And if I could ask you to look at 1127. We see there that, as at 14 August 2017, these notes show that questions were being asked internally about why a home loan facility had been provided for a commercial secured property?---That's correct.

And if we turn to the next page, 1126, we see an internal note from 22 August 2017, at 1126. Towards the bottom of the page, 22 August 2017 recording that the LVR was not within the bank's underwriting standards.

45 Do you see that?---Yes, I do.

And the clients, therefore, needed to provide either a sale contract of property being sold and/or contribute to funds to reduce the LVR to 65 per cent?---Yes.

I tender that document, Commissioner.

5

THE COMMISSIONER: Advance application file WBC.403.001.1118, exhibit 3.65.

10 **EXHIBIT #3.65 ADVANCE APPLICATION FILE (WBC.403.001.1118)**

MS ORR: And we know that on 26 September 2017 Mr and Mrs Wallis sent a request to the bank to discharge the mortgage over the Port Macquarie investment property on the basis that they had sold that property?---Yes.

15

Now, coming back to these internal notes, if we could turn to 1126 again, we see there an internal note from 27 September in the middle of the page:

20 *We are discharging the below property as client is selling the property for over 600,000. Property to be discharged is the Port Macquarie property.*

And then if we look above that at the note on 28 September, a credit officer says:

25 *As discussed with regional general manager Damien Brander we need to amend the following thing as mentioned below. From the sale proceeds we need to hold 97,000 as term deposit for the B2 facility remaining.*

30

B2?---I think it's Blast – I am not 100 per cent sure.

But in any event it was a reference to the Byabarra facility?---Yes, I assume that too.

Continuing:

35 *Product needs to change to a business loan facility in line with security.*

?---Yes.

Continuing:

40

*Valuation to be by a commercial panel valuer confirming MV of the property and if any amounts exceed 65 per cent LVR will need to be cleared from the 97,000 being held as security.*

45 ?---Yes.

And we see from the line underneath the 97,000 is:

*...being provided as collateral until valuation is received and satisfactory LVR are met along with product change as confirmed.*

?---Yes, I do see that.

5

All right. Now, continuing on that chronology, on that same date, 28 September, there was an email from Mr Brander to Mr Wallis, which you've annexed to your statement as exhibit 46. Now, if we turn to 4067, you will see an email there that I took Mr Wallis to yesterday. You may have heard when I read this email out yesterday, an email from 28 September that refers to a telephone conversation that Mr Brander has had with Mr Wallis, and his commitment from our state credit officer – this is the email at the bottom of the page:

15 *Commitment from our state credit officer to approve the sale discharge request which we will look to complete next Friday on the condition that we hold 100,000 of the sale proceeds in a term deposit. We will release the term deposit when the new business loans are in place to correctly secure the bank's post settlement position.*

20 See that?---Yes, I do.

And I think you heard the emails that I took Mr Wallis to yesterday showing the subsequent exchange that occurs between Mr Brander and Mr Wallis?---Yes, I did.

25 Could I ask you to look at another of your exhibits which is exhibit 44, WBC.403.006.3487. We see there an email from Mr Miller, a business banking manager, to Mr Wallis on 5 October telling Mr Wallis that:

30 *Partial discharge settlement has been approved subject to a condition precedent.*

Do you see that?---I do.

35 Continuing:

*The term deposit from the sale proceeds for 100,000 is to be taken as additional collateral until satisfactory commercial valuation is received with loan to value ratio of 65 per cent is confirmed and/or cash funds to be used to reduce overall funding in line with loan to value ratio of 65 per cent.*

40

?---Yes, I see that.

Now, the decision to take this approach to hold the \$100,000 as collateral had been approved by the Bank of Melbourne's credit team?---Yes.

45

Now, could I ask that you look at another document, which is WBC.403.001.1737. We see this is an email from Joel Gatton – or, I'm sorry, Jatin Goel at 1738. I need

to take you to first, Mr Welsh. Mr Goel – or possibly Ms Goel, I’m not sure – is a lending specialist we see there from the footer of the email, a small business lending specialist and this person says to a group of people, including the credit officer whose name we saw on some of the previous internal notes, Ronnie Sewani:

5

*We’re not formally taking the TD, the term deposit, as security. It is just there for comfort pending the valuation of the property coming back, so we know where we stand from a security perspective, which should be in the next few days.*

10

Do you see that?---I do.

And in the paragraph below that, second sentence:

15

*Really sorry to be escalating this one when all the delays were before it got to you, but the issues weren’t the customers’ fault either, and we just want to do what we can to make the best of a bad situation.*

20

?---Yes, I do.

Okay. So this email confirms, doesn’t it, that the bank’s decision to require the term deposit to be created to hold the \$100,000 from the proceeds of sale from the Port Macquarie property was taken to try and bring about a solution to a problem caused by the bank’s own conduct and not by any fault on the part of Mr Wallis?---Yes, that’s correct.

25

All right. Thank you. I tender that document, Commissioner.

30

THE COMMISSIONER: Emails between Goel, Conder and others, October 2017 WBC.403.001.1737, exhibit 3.66.

**EXHIBIT #3.66 EMAILS BETWEEN GOEL, CONDER AND OTHERS  
DATED OCTOBER 2017 (WBC.403.001.1737)**

35

MS ORR: Could I ask you be shown WBC.403.001.1742. It’s an email chain from October when it comes up, Mr Welsh. The last email was 6 October and this email is 19 October. We will see it when it comes up, but I can ask the question anyway  
-- -?---Please.

40

-- - Mr Welsh, which is you will see in this document when it comes on the screen that there is an internal request to ask business servicing team to put a hard hold on this term deposit. Could you explain what a “hard hold” is?---My understanding is it would be that you’re not allowed to make a withdrawal from it.

45

Okay?---That’s how I read that document when I saw it.

So the \$100,000 was to be in a term deposit in Mr and Mrs Wallis – or their corporate entity’s name but they were not going to be permitted to access it?---Yes, correct.

5 Thank you I tender that.

THE COMMISSIONER: Emails between Li and Zhao, exhibit 3.67, 19 October '17, WBC.403.001.1742, exhibit 3.67.

10

**EXHIBIT #3.67 EMAILS BETWEEN LI AND ZHAO DATED 19/10/2017  
(WBC.403.001.1742)**

15 MS ORR: Can I just take you back to the extended email chain between Mr Brander and Mr Wallis in the days that follow this. I just want to ask you a couple of questions by reference to that. It is the one that I took Mr Wallis through yesterday. It’s exhibit 46 in your statement. We started with the initial communication in September 2017?---Yes.

20

Now, you would have heard that these emails show that Mr Wallis requested information from Mr Brander about the legal right of the bank to hold the \$100,000?---Yes, I did.

25 And you can see from 4066, and an email from Mr Brander to Mr Wallis on 19 October, which appears on the bottom of that page, that in response to that request Mr Brander tells Mr Wallis that he is going to provide him with a copy of the contractual documents, but he has to retrieve them and it might take some time?---Yes, I do see that.

30

So we can take from that that, at the time Mr Brander is communicating with Mr Wallis about these matters, he has not himself reviewed the contractual documents?---I – I don’t know what he reviewed, sorry.

35 Well, we can see that he hasn’t retrieved - - -?---Yes.

- - - the contractual documents from storage yet?---Yes, he had - - -

40 He hadn’t?---That’s my read of that as well. He needed to get them from – from storage.

Yes. So do you understand on what basis he was asserting to Mr Wallis that the \$100,000 could be held in a term deposit that they could not access at this stage?---I don’t understand it fully. However, there may be an explanation, but I don’t know what it is.

45

- And we see that subsequently Mr Brander, after some days, retrieves those documents and sends copies to Mr Wallis?---Yes, we do.
- 5 And he identifies certain clauses within one of those documents, which is the Memorandum of Provisions for the mortgage?---Yes.
- Is that right? Have you reviewed those provisions that Mr Brander referred Mr Wallis to?---I – yes, I have.
- 10 And you’ve annexed the Memorandum of Provisions for the Port Macquarie mortgage - - -?---Yes.
- - - as part of exhibit 31 to your statement?---Mmm.
- 15 You haven’t annexed the Memorandum of Provisions for the Byabarra mortgage, but they were entered into at the same time; can we assume they would be in the same form?---Yes.
- 20 Can you direct us to the clauses of the Memorandum of Provisions that permitted the bank to retain \$100,000 of the proceeds of sale from the Port Macquarie property and place it in a term deposit that was not accessible by Mr and Mrs Wallis?---So how I work through this – and it might be a good way of looking at it – was I – I looked at our information, the – our lawyers – and I think our lawyers – internal lawyers or internal mortgage team would have provided Mr Brander with some of this
- 25 information. I wouldn’t have expected Mr Brander to have gone and read through all the documents and make the call, I would have wanted independent judgment. So If I assume that, that was one - - -
- Just pausing there?---Yes, please.
- 30 Because that’s an important assumption?---Yes.
- Do we see anything, in any of the documents that you have provided, to indicate that that occurred?---No, I don’t.
- 35 So why do you assume that that happened?---Because the – it got quite technical here, and my experience of a regional general manager if they got into this situation, is they wouldn’t be relying on their own judgment to go and read documents and debate with clients. They would get support from either the credit team or the legal
- 40 team, because you want to get it right, and you would be relying on lawyers and people with expertise to – to help get this right.
- But there’s no evidence that Mr Brander relied on any lawyers, is there?---There’s no evidence?
- 45 That Mr Brander relied on any lawyers before making this communication to Mr Wallis?---Internal legal team, sorry. I - - -

Have you seen any - - -?---I made – I made an assumption that that’s what he had done.

5 And my question is: have you seen any documents to suggest that that occurred?---No, I haven’t.

Okay. So it’s not a particularly safe assumption then, is it, Mr Welsh?---I didn’t see any evidence, you’re correct.

10 Right. Okay. Well, let’s stick with your assumption, and even though there are no documents to suggest that anything of that nature happened, let’s assume that Mr Brander did get some legal advice about this to identify some clauses. My question to you, having reviewed these documents yourself, is where in this document do we see the bank’s entitlement to act as it did?---My review of – I have read the  
15 documents. My review of this was informed by the FOS decision, so I went to the – the FOS decision that I’ve attached there, and they looked through clauses 22.1, 22.2, 22.3, and then the definition of a – all moneys clauses amount owing.

20 So you informed yourself by reference to what FOS said about this?---To my read, but I’m – I’m not a lawyer, so what I would have done, and maybe that’s the assumption I made to Mr Brander earlier, what I would have done is gone to the legal team and had a look at this. I – I’ve had a review of it at a high level and then also looked at FOS and they were my two reference points to – to do that.

25 Where do we see any evidence in the documents that anyone within the Bank of Melbourne considered whether the bank had a legal entitlement to act as it did before it proceeded to act in that way?---I don’t see evidence of that.

30 It didn’t happen, did it, Mr Welsh?---I don’t see evidence of it.

Well, can I – the decision to act in this way – and when I say act in this way - - -?---Yes.

35 - - - I mean to quarantine the \$100,000?---Yes.

And keep it as collateral until Mr and Mrs Wallis agreed to restructure the loan to what it should have been - - -?---Yes.

40 - - - in the first place. That was made by the credit team?---Yes.

You accepted that before?---Yes.

45 Can I take you to a document recording that decision, which – I’m sorry, I will just find the reference for – WBC.403.002.7170. If I could ask you to look at 7179, and if we could have 7180 on the screen next to it. And do we see there, at the second half of the page on the left-hand side of the screen, Ronnie Sewani the credit

manager, on 5 October 2017, approves a condition precedent which we see as number 3 on the following page is:

5           *Term deposit from sale proceeds for 100,000 to be taken as additional collateral until satisfactory commercial valuation is received with TAE within LVR of 65 per cent is confirmed and/or cash funds to be used to reduce overall TAE in line with LVR of 65 per cent.*

10           That is the decision – that is the approval - - -?---Yes.

- - - to impose a condition precedent on the discharge of the mortgage which was made by Ronnie Sewani, the credit manager recorded in this document?---That is correct.

15           Do you agree with that?---Yes, I do agree with that.

20           Do we see any consideration whatsoever in this document of whether there is a legal entitlement to take this action by reference to any of the contractual documents?---No, I don't, in this document. No, I don't.

And do you accept from that that it didn't happen, Mr Welsh. There is no evidence for it in any of the documents?---I don't know what happened.

25           Well - - -?---I don't know how they informed themselves and there is no evidence. I accept there's no evidence, but I don't know what happened there.

Well, I want to put to you - - -?---Yes.

30           - - - based on my review of the documents, the same documents you've read, that the bank decided what it wanted to do, which was to retain the \$100,000?---Yes.

And it decided to worry later about whether it had any legal entitlement to do that?---I – I don't know whether that was the case. I – I can't see any - - -

35           Well, I want to put to you squarely that the bank took advantage of the fact that Mr and Mrs Wallis needed the discharge of the mortgage on the Port Macquarie property, so time was of the essence, and they took advantage of that and pressured them to agree to the retention of the \$100,000?---The Port Macquarie sale was the trigger to review the facilities.

40

Yes?---I have – I have – there's no evidence on the files there.

45           And you saw the email from Mr Wallis where he said that he had felt pressured to agree to this because of the need for the discharge of the Port Macquarie mortgage?---I did.

Yes. I tender this document, Commissioner.

THE COMMISSIONER: It hasn't gone in before?

MS ORR: No, it's a separate document of a similar style to one I have already tendered, Commissioner.

5

THE COMMISSIONER: Exhibit 3.68 will be internal Bank of Melbourne notes, October '17, WBC.403.002.7170. Exhibit 3.68.

10 **EXHIBIT #3.68 INTERNAL BANK OF MELBOURNE NOTES DATED OCTOBER 2017 (WBC.403.002.7170)**

MS ORR: Now, I want you to put the very general statements made by FOS about this - - -?---Yes.

15

- - - to one side, Mr Welsh. And I want you to have one more opportunity to answer my question about where in the documents that were provided to Mr Wallis, on the basis that they created a legal entitlement to do this, do we see that legal entitlement?---I don't know the answer to that question. I am not a lawyer. I haven't reviewed them with that level – with a legal eye. I'm told that we can rely on them. I can't point to the clauses, I'm afraid.

20

Very complicated clauses, aren't they, Mr Welsh?---They are.

25

And you yourself can't work out how they permit this to occur?---I can follow at a high level, but I would understand how – it's too complex even for a client, I do accept that.

But you expected Mr and Mrs Wallis to understand how and why these documents entitled the bank to act in this way?---Yes.

30

And that was an entirely unrealistic expectation, when it proves to be so difficult that you can't articulate it, Mr Welsh?---I think that's a – that's a fair assumption, that it's – it's complex and difficult for clients to read.

35

And what I want to put to you - - -?---I agree with that.

- - - is that the clauses that FOS referred to in its determination were clauses that entitled the bank to use money received under one mortgage towards paying an amount owing. Does this ring any bells with you - - -?---Yes, yes, it does.

40

And amount owing is defined in the Memorandum of Provisions?---Mmm.

At 4396. I will take you to this, Mr Welsh, to mean – I'm sorry, we're in the document that commences – we had it on the screen before, WBC.403.006.4386.

45

The Memorandum of Provisions for the mortgage. I just want to spend a small amount of time trying to understand this myself, Mr Welsh?---Yes.

The clause that FOS referred to was 22.1 at 4394, on 4394, which tells us that:

5

*Money received under this mortgage is to be used towards paying the amount owing unless we are obliged to pay the money to anyone with a prior claim.*

?---Mmm.

10

That makes sense, doesn't it?---Yes.

Okay. And then 22.2:

15

*If at the time we receive the money, any part of the amount owing is not then due for payment, we may retain an amount equal to that part. We must hold it in an interest bearing account and use it to pay the amount owing when it becomes due for payment.*

20

Do you see that?---Yes, I do.

And "amount owing" is defined at 4396 to mean – I will just wait until that comes up, so you can follow this?---Thank you.

25

Do you see the reference to "amount owing" there to mean that:

*At any time and subject to another clause all money which one or more of you owe us or will or may owe in the future.*

30

And then it includes various things. Now, these are the clauses referred to by FOS, and I just want to go back to clause 22.2. Do you say there was an amount owing to the bank?---I believe that's what we say, yes.

35

What was the amount owing?---The amount owing was deemed to be under the other mortgage in this – in this case.

Okay. And that wasn't due for payment; is that right?---Correct.

40

So 22.2 entitled you to retain an amount equal to that, and you were required to hold it in an interest bearing account, but you were then required to use it to pay the amount owing. You didn't do that, did you?---Correct.

45

You didn't retain the \$100,000 to pay to an amount owing on the Byabarra mortgage?---Mmm.

You retained the \$100,000 as a bargaining chip to get Mr and Mrs Wallis to agree to the restructure of the loan that you wanted because of the conduct of Mr Athanasopoulos back at the loan origination point?---I would agree with that.

5 So these clauses did not support the action taken by the bank, did they?---I'm not a lawyer, so it's – it's not my area of expertise on this. My team have told me that they did that. I have said this – my call is this is wrong. We shouldn't have done it.

I understand?---I have said that in my statement. I thought we – we made an error and we shouldn't have passed that error on to our customer. I think we called it wrong. And – and a – I'm not sure of all the detail of that but we did. We got this – we got this wrong and passed that on to our customer and that was a bad call by us.

15 And do you accept that when you got it wrong – I want to be very clear about what you're accepting you got wrong – because FOS, having had a look at these provisions, said that you had an entitlement to do this, but that it was unfair for you to do this, and what I want to put to you is that it was not only unfair, but that you didn't even have an entitlement to do it?---I don't know that.

20 You don't know?---I'm told that we did, but I haven't – I'm not a lawyer, so I've been told that we – we were able to do that, but it's not my area of expertise for the legal documents.

25 Well, you are the person I have to ask these questions - - -?---Thank you.

- - - Mr Welsh. And I need to put them to you because you told me that your conclusions were informed by what FOS had done. And otherwise you tell me you can't point to any clauses that entitled the bank to do what it did?---Sorry, if I've misinformed you I should correct myself. I was informed by two steps. The first is my own team reviewing these documents and saying we had the rights.

30 When did that happen?---In conversations with my internal legal team.

35 When? When did that happen?---When – as I was working through – because I said, look - - -

I see?---I asked similar questions to you, are we able – “Are we able to do that?” And I'm told we were. And then for – to get myself a bit more comfortable, I looked at what FOS has done and that gave me a second check point. But I – but when I looked at it, I still thought we shouldn't have done that.

40 Yes?---And that was the wrong – the wrong call by us.

45 Yes. By withholding the \$100,000 from Mr and Mrs Wallis, the bank acted unfairly towards Mr and Mrs Wallis, didn't it?---Yes, I think it did.

It was an abuse of the bank's power in its relationship with Mr and Mrs Wallis, wasn't it?---Yes, I – I think – well, I agree we should not have done it.

5 And do you agree it was an abuse of the power – the imbalance of power which involved these complicated contractual documents and the pressure of time to discharge the mortgage. It was an abuse of power in the bank's relationship with Mr and Mrs Wallis?---Well, from my review of the file, we didn't give – there weren't many options for them. So it's like - - -

10 There were no options were there?---Agreed. So that's how I read it and I read it that we shouldn't have done that.

15 And do you agree that the fair thing to do in this situation would have been to accept the position that the bank had created for the remainder of the loan term?---Yes, I agree.

Yes?---Definitely.

20 Yes. When did the Bank of Melbourne release the \$100,000 to Mr and Mrs Wallis?---February.

And why did the bank release it at that time?---I think that they were going to sell the property. They were going to do one of two things

25 They had sold the Byabarra property?---They had. They were either going to get a revaluation or sell it and at that point in time, when we knew that we – we released.

30 It meant that there was no reason any more to continue with the proposed restructure of that loan, didn't it?---Yes, it did.

Because they didn't ever agree to that proposed restructure, so you had retained the \$100,000 - - -?---Yes.

35 - - - until that point?---Yes.

Okay. And FOS found that the conduct of the bank was, in its words, "inappropriate and unfair"?---Yes.

40 And the bank accepted that finding?---Yes, we did.

And having accepted that finding did the bank take any disciplinary action against any of the individuals involved in the decision to withhold the \$100,000?---I don't know that.

45 Have you seen any evidence of any disciplinary action being taken against any of the individuals involved in that decision?---No, no, I haven't.

And if such - - -?---I haven't asked for it, though.

Right. Do you think it would have been in the material you had reviewed if it existed?---It could have been.

5

Should there have been disciplinary action, Mr Welsh?---I would have hoped there was a discussion with the team to look at what their thinking were and to review that.

Well, should there have been disciplinary action?---Well, it depends on what other facts they saw, what they did, they reviewed, it could depend on a lot of situations. A bit hard to - - -

10

Well, I want to put to you the facts as we've been discussing them. The bank accepted that the conduct was unfair?---I - sorry, I - - -

15

The bank accepted FOSs determination?---Yes, yes.

- - - that the conduct was unfair?---Well, sorry, I don't - I mean, we accept FOSs determination and we made the payment. So that's what - - -

20

And you have said - - -?---That's what we did.

- - - to me today - - -?---And - - -

- - - that you accept the conduct was unfair?---And in my review of this file I think it was the wrong action.

25

So have you asked whether or not any disciplinary action has been taken against the people who engaged in the unfair conduct?---No, I have not.

30

That conduct wouldn't be in line with the bank's values and behaviours, would it?---Wouldn't be in - in - in my view, but I haven't had a conversation with them, so it's hard to tell - I - it's hard to tell what their read of the situation was.

Well, what do you think their read of the situation was, Mr Welsh?---I don't know, because I haven't talked to them.

35

Why not?---I didn't look to that to inform myself for this - for preparation of this discussion.

40

Do you think it would have been useful if you had, Mr Welsh?---I do now.

Yes. Well, I want to put to you that this conduct wasn't consistent with the bank's obligation under the Code of Banking Practice to act fairly and reasonably towards its business customers in a consistent and ethical manner?---I don't think we should have made that - made the judgment that we did. We should have released the money

45

I - - -?---We shouldn't have held the money, I agree.

I understand that, but I would be grateful if you address my question?---Okay. Sorry.

5 Which is whether or not you accept that conduct is not consistent with the bank's obligation under the Code of Banking Practice to act fairly and reasonably towards its business customers in a consistent and ethical manner?---My – my view of – that we didn't act fairly, yes, that's my view.

10 Okay. And do you accept that it constituted misconduct within the definition of misconduct in your own misconduct and disciplinary action policy?---Yes, it could have.

15 Do you accept that it did?---Well, I – I want to have a conversation with people. I can't – I – I – I'm – I would want to sit down and hear their side of the version of it, if we were going down that path.

20 Well, we know from your misconduct and disciplinary action policy that misconduct includes failure to display Westpac group values and behaviours?---Yes.

Is that what this was?---I want to sit down and hear their – how they saw things.

25 Well, what do you think – what is it that you feel you're missing as part of the picture that would help you to answer these questions, Mr Welsh?---I'm not 100 per cent sure of the legal advice. So I would want to understand that legal advice and I want to – I would have a look at that. I would also want to talk to the people of – of what their – how they were thinking through this and why they were – were taking that. I think it's fair to – to have a conversation with people and – and to logically work through and hear their – their story before you made a call on that, on  
30 misconduct.

35 Okay. Can I just turn briefly to the way that the Bank of Melbourne engaged with FOS as part of the FOS process, and could I ask that you look at a document which is FOS.0015.0001.1179. This is a letter from FOS to the Bank of Melbourne on 14 December 2017. So this is prior to FOS making its determination?---Mmm.

And we see a series of questions that FOS posed to the bank, and the fifth question was:

40 *What event triggered Bank of Melbourne to review the structure of loan 1?  
How did Bank of Melbourne first discover the security was a commercial  
property? On what basis does it say it is a commercial property?*

45 Do you see that?---Yes, I do.

I tender that document, Commissioner.

THE COMMISSIONER: Letter from FOS to Bank of Melbourne, 14 December '17, FOS.0015.0001.1179, exhibit 3.69.

5 **EXHIBIT #3.69 LETTER FROM FOS TO BANK OF MELBOURNE DATED 14/12/2017 (FOS.0015.0001.1179)**

10 MS ORR: And could I ask that you be shown the Bank of Melbourne's response to that letter which is FOS.0015.0001.0491. And we see the answer to that question at paragraph 5:

15 *On or about 23 June 2017, Mr Wallis requested we undertake valuations on both his Byabarra and Port Macquarie properties as he wanted to determine how much equity could be leveraged. Initially, believing both properties to be classified as residential, two residential valuations were ordered. On or about 10 July 2017, our panel valuer deemed that Byabarra was classed as a commercial property and as such a commercial valuation would be needed.*

20 ?---Yes, I see that.

Was that a full and fair answer to the question posed by FOS? Would it assist you if that document was brought up on the screen again?---Please.

25 Perhaps we could have the previous document on the left-hand side so you can see the precise question that was asked. And this document on the right-hand side?---Mmm.

30 Was it a full and fair answer?---No, I don't think it is.

And why did your organisation not make a full and fair answer to FOS in the FOS process?---I – I don't know why.

35 You agree that the bank failed to properly disclose the extent of its knowledge about the characterisation of this property to FOS?---Our banker knew and there were records between the valuation – the valuer where there was some debate around whether it was a – by the banker whether it was a commercial – whether it was residential or commercial, but in my view it was commercial, so it should have been disclosed to FOS.

40 And there's no reference to those earlier events and the earlier valuer's view at the origination time in the response to FOS, is there?---That's – that's a one page there, is it? Yes, no, I don't see anything else.

45 There should have been, shouldn't there?---In my view, yes.

But you can't offer any explanation for this?---No, no, I can't.

Was the Bank of Melbourne trying to minimise the extent of its misconduct?---I don't know.

All right. I tender that second letter, Commissioner.

5

THE COMMISSIONER: Letter from Bank of Melbourne to FOS, 19 December '17, FOS.0015.0001.0491, exhibit 3.70.

10 **EXHIBIT #3.70 LETTER FROM BANK OF MELBOURNE TO FOS DATED 19/12/2017 (FOS.0015.0001.0491)**

MS ORR: No further questions, Commissioner.

15

THE COMMISSIONER: Just before Mr Darke asks you any questions he may have, Mr Welsh, can I just go back to this question about fairness/unfairness. Let it be assumed that, with all accounts mortgages, the bank had a right to retain the surplus proceeds from the sale of the Port Macquarie property. Let that be the assumption. What exactly do you say is the unfairness that was worked to the client by insisting on that retainer of the 100,000?---Was the unfairness – well, they didn't have access to - - -

20

I understand that, but why was it unfair of Bank of Melbourne to require, initially, keeping of 100,000 in term deposit?---Well, it was our mistake. In my view, it was our mistake. We made the mistake originally, our banker got it wrong, therefore we shouldn't have imposed that mistake on the client. We should have stood back and said to them, "We've lent you a higher amount than we should have, therefore you've taken on more risk." And we should have had that conversation with them, but it was our mistake, so we shouldn't have imposed that on them. That's my view.

25

30

Can the unfairness be described as seeking to improve the bank's security position from the position it had sought and obtained at time of original loan?---Yes, it can. And I can see – I can see why our credit officers might have made that call. They might have sat back and looked, and "You've got a 30 year loan that's got a higher risk profile. This is a trigger that happens within business. Now would be a good time to talk about that and try to resolve it." I think it could have been done in a better way because we had – you know, potentially was over exposed and they might have looked at some other things. So I can see why they were having those conversations but it was our problem, our mistake.

35

40

I understand that?---Yes.

And I think you've conveyed that point?---Thank you.

45

Thank you. It's the larger issue of, firstly, all accounts instruments, whether they're all accounts mortgages or all accounts guarantees, all moneys instruments, and cross-

collateralisation generally. Firstly, in business lending, cross-collateralisation – it really is Friday, isn't it, Mr Welsh – cross-collateralising is commonplace?---Yes, yes.

5 So that you will have intersection between securities and particular lines of credit?---Okay.

Now, trying to get some understanding of what you, as a banker in your position, think about a notion of fairness when it is applied to a transaction which begins with all moneys instruments, cross-collateralised. How does fairness bite, if at all, in cases of that kind?---I think we've seen over the last few days of our discussions that small business is pretty complex. And small business is complex because there's a range of entities and there's also the personal side of being involved with, we've had trusts, we've had – we've also had companies, we've had guarantees. So it's a complex beast. And – and ironically enough, it's often more complex at the smaller end than – than at the bigger end, where you've got a standard corporate structure with all the right responsibilities, accountability and well-intended people advising. So you've got this sort of messy situation going on. And our experience with business is you want to be able to look through that and be able to support you as they make decisions. Even if you look at this file here, there's a number of things going on, one moment he's keeping it, the next moment he's going to sell it. So there's lots of things going on and they're changing. The benefits of the cross-collateralisation and the linking is that you've got more flexibility to move. What I would fear for small business is if you looked at it more like an individual home loan and had everything down one silo, and then you would only be looking at each silo in its own right. So there are some benefits, both for the customer and also for the bank because it improves our risk position when we've – when we look across them. So whilst, on the face of it, the fairness of – you might look at it and go, “Well, that's not fair”, the intent is to provide more flexibility for clients, in my view.

30 I understand that. And I just wanted to press you a little further, if I could. Firstly, all moneys instruments are commonly used, aren't they?---Yes, yes.

35 And commonly used in small business lending, as they are in other forms of lending?---Yes.

Yes. And if all moneys instruments extend not only to what has been demanded, but what is contingently liable, the reach of an all moneys instrument can be very far. Do you accept that?---I do.

40 How, if at all, is a banker to determine – by what criteria is a banker to determine whether insisting on the letter of the law and insisting on the letter of an all moneys instrument, is fair to the small business enterprise? What sorts of consideration can come to bear upon that?---At a high level, I think what's important is that you give flexibility to the business, particularly for business, because they've got working capital. You give the business flexibility to be able to change and change their – change their requirements as their needs change. So you want to have that

flexibility, because we've seen lots of transactions of things coming and going. So that's pretty – that's very, very important. Now, the implications of that, as you – you are more inclined to have all of – all moneys, all securities, and all locked up. So I think the trade-off is the fairness of the all moneys with the flexibility that the business owner gets so that they can make calls, because they're making calls daily on how they do things, they're looking at opportunities where they may want to buy more stock, do things. So that flexibility is there. We're also seeing situations where businesses may have a number of entities. They may be buying and selling things within one entity, starting up a new business or a new channel, and often they do that through different companies. So it allows them an ability to look at the holistic nature of their business, albeit that they've got different legal entities and different structures. So I think there's a trade-off there between flexibility and fairness.

And how much does the bank need to inform the small business owner or operator, “These instruments you're signing are all moneys instruments: security number 1 supports security number 2, supports debt number 1, supports debt number 2, supports facility number 4,” etcetera?---My view is usually business owners are reasonably informed. They don't know all the details. Reasonably. What is clearly evident - - -

First time I have heard of small business being across all moneys instruments, Mr Welsh?---No, no. I would accept that. But what – I think they understand that – and I heard you talk to this before – I understand that when they're going into the business they're looking to the good times, they're looking, “I've got the good story here, I'm backing myself, I'm bullet proof.” They are looking to the future. They're not going through all moneys calls and go, “What if something goes wrong?” Now, they know that if something goes wrong – in my experience – there's implications for that. They know, when we take all money guarantees to the level when we've got security, they know that they have to back themselves. Because they are taking on big risks. And they know that. Are they alive to them as much and are they alive to them as to the details? I am not sure. You could say one of the outcomes here would be you want to be a lot more detail and you want to add – and explain a lot more. That would add some complexity for them, and I think you would want to be very thoughtful about the trade-off there, because my pick is they're still going to back themselves and go, “I've got a great idea and I'm here.” Now, we want to support them, but we don't want to add more complexity to them. So it's a very nuanced trade-off that needs to be thought deeply about. And probably the last thing is I am – I don't want our bankers making too many of the judgment calls on – on what they should or shouldn't do. You know, we need a set framework to be very clear and I want our clients to be informed, I want them to understand what they're getting into, because that's absolutely critical, but I also want them to be able to operate their businesses and – and go for the things they want to go for.

Yes. Yes, Mr Darke. Sorry, Ms Orr is there anything arising out of that? Mr Darke.

MR DARKE: Commissioner, may I just indicate two matters before Mr Welsh leaves the witness box. First, in relation to the information that the bank provided to

FOS concerning the term deposit dispute, if I can use that language, there are some documents that have been provided to Counsel Assisting, but that aren't part of Mr Welsh's statement, that bear on that issue. We will identify them for Counsel Assisting, and I expect they will be able to be tendered by consent. Secondly, earlier  
5 on in his oral evidence, Mr Welsh referred to a Bank of Melbourne policy concerning the valuation of security properties. If we can identify that policy, and it is of relevance to the Commission's inquiry, again we will identify that for Counsel Assisting and I imagine it can be tendered by consent, but I am not in a position to re-examine those - - -

10 THE COMMISSIONER: It is late in the day to be pulling out new policies, Mr Darke. I mean, I am not going to anticipate what happens when we get to it, but I thought that you were asked to produce the applicable policies, and it leaves me in a very awkward position if later you come along and say, "Oh, no, it's not. Here is  
15 another applicable policy." I have lost Mr Welsh out of the box. He hasn't heard anything. What am I meant to make of it all?

MR DARKE: It's a policy that was referred to – and I think exhibited to a statement that Mr Welsh prepared in respect of Rubric 3-3, which ultimately wasn't required to  
20 be finalised.

THE COMMISSIONER: Well, if it is, put it to him. If it is, put it to him, Mr Darke. Mr Welsh is in the box now.

25 MR DARKE: I - - -

THE COMMISSIONER: To be fair to him, to be fair to the bank, to be fair to everybody who is interested in this, we have got to draw this to an end, haven't we?

30 MR DARKE: Commissioner, I entirely accept that, and I'm not seeking to prolong the matter.

THE COMMISSIONER: No, not prolongation. I am just concerned that we know that we have an identified field. So if there is another policy you need to put to him,  
35 put it to him.

MR DARKE: Well, I will endeavour to do it now. I am not sure whether it's the policy that Mr Welsh had it mind and it's not uploaded to the system so I will have to provide a paper copy, if I may.  
40

**<RE-EXAMINATION BY MR DARKE**

**[11.49 am]**

45 MR DARKE: Mr Welsh, do you see there that you have a document headed Consumer Lending Lending Policy?---Yes, I do.

And could I ask you to turn through to page 8414, using the numbering in the top right-hand corner. And do you see section 19.3.3 on that page?---Yes, I do.

5 And that provides for the valuation of real estate in certain circumstances by reference to the purchase price in a contract of sale?---Yes, it does.

10 Is this the policy that you were referring to when you were asked by Counsel Assisting about policies for the valuation of security?---Yes, this was the one I was referring to.

Yes. I will tender that policy, if I may, Commissioner, and we will have it uploaded to the system in due course.

15 THE COMMISSIONER: Exhibit 3.71 will be St George Consumer Lending Lending Policy, WBC.050.034.8298. January 2009 seems to be the currency date. Do you accept that, Mr Welsh?---I do. Thank you.

20 **EXHIBIT #3.71 ST GEORGE CONSUMER LENDING LENDING POLICY DATED JANUARY 2009 (WBC.050.0348.298)**

THE COMMISSIONER: Yes.

25 MR DARKE: Nothing further.

THE COMMISSIONER: Yes, Ms Orr.

30 **<FURTHER CROSS-EXAMINATION BY MS ORR [11.51 am]**

35 MS ORR: Yes, Commissioner. You have that document in front of you still, Mr Welsh?---Yes, I do.

8414 is open. Do you see there that this applies to newly proposed residential security property? Do you see - - -?---Help – no, help me please, where are you reading from.

40 Under the heading 19.3.3, Purchase Price Contract of Sale Purchase Price: Real Estate Valuation Methods?---Yes.

It says:

45 *The purchase price in a contract of sale excluding the value or cost of chattels, furnishing any rebates or incentives offered by the vendor may be used to*

*determine the security value for a newly proposed residential security property where certain criteria are met.*

Is that what it says?---Yes, it does.

5

This wasn't a residential security property. We've got to that point, haven't we, Mr Welsh?---Agree.

10

Yes. So this policy didn't apply to the valuation of this property?---Yes. And I thought you were at the time taking me through the residential security policy which allowed a contract of sale.

15

That other policy that you annexed as part of your statement applied to both commercial and residential securities, didn't it?---Yes.

And is that why you annexed that policy to your statement rather than this policy?---Yes, it is.

20

Okay. Thank you.

THE COMMISSIONER: Yes. Yes, thank you very much, Mr Welsh. You may step down. And I think you are now excused - - -?---Thank you, Commissioner.

25

- - - from further attendance. Those words you've been longing to hear?---You are right.

For once.

30

**<THE WITNESS WITHDREW**

**[11.53 am]**

THE COMMISSIONER: Ms Orr.

35

MS ORR: Commissioner, the next case study involves Suncorp and we will start with a consumer witness. Could we have a moment to reset the bar table.

THE COMMISSIONER: Yes. If I come back shortly before midday.

40

MS ORR: Thank you, Commissioner.

**ADJOURNED**

**[11.53 am]**

45

**RESUMED**

**[11.59 am]**

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, as I indicated, the next case study involves Suncorp, and  
the first witness in that case study, who is seated in the witness box is Mr Rien Peter  
5 Low. Rien spelt R-i-e-n.

**<RIEN PETER LOW, AFFIRMED**

**[12.00 pm]**

10

**<EXAMINATION-IN-CHIEF BY MS ORR**

THE COMMISSIONER: Thank you very much, Mr Low. Do sit down. Yes, Ms  
15 Orr.

MS ORR: Mr Low, could you please state your full name?---Rien Peter Low.

And you reside at an address in Victoria known to the Commission?---Correct.  
20

What is your occupation, Mr Low?---A TV producer.

Thank you. And have you received a summons to attend and give evidence today,  
Mr Low?---Yes.  
25

I tender that summons, Commissioner.

THE COMMISSIONER: Exhibit 3.72, summons to Mr Low.

30

**EXHIBIT #3.72 SUMMONS TO MR LOW**

MS ORR: And have you made a statement to the Royal Commission dated 23 May  
35 2018, Mr Low?---Yes.

And are the contents of that statement true and correct?---Yes.

I tender that statement, Commissioner.  
40

THE COMMISSIONER: Exhibit 3.73, statement of Mr Low, 23 May '18.

**EXHIBIT #3.73 STATEMENT OF MR LOW DATED 23/05/2018**

45

MS ORR: Mr Low, in November 2015, your father passed away?---Yes. My father passed away in a workplace accident and he suffered fatal injuries.

And do you remember the date, Mr Low?---Yes, 9 November.

5 And how old was your father at the time of his death?---63.

63?---63, Yes.

10 Thank you. You said your father died in a workplace accident?---Correct.

Your father ran his own business?---Correct.

And what was the nature of that business?---He had a blasting contract company.

15 A blasting contract - - ?---Contract, yes.

- - - company. And how many people did your father employ in that business?---At that time it was just himself.

20 How long had your father been running that business?---He started the business around 1986.

And at the time of his death, your father was living with your mother in the family home in Healesville; is that right?---Yes.

25 Did your mother and father own the family home?---Yes.

And was it subject to a mortgage?---Yes.

30 And how old was your mother when your father died?---62.

And did your mother work?---No.

35 Your mother initially planned to come and give evidence in these Commission hearings; is that right?---Yes.

She has decided not to give evidence?---Yes. She just found the experience a little bit too overwhelming and at this time she's – yes, she's not doing so well.

40 Okay. In your mother and father's relationship, who looked after financial matters?---My father.

And after your father's death, did you look into your parents' financial affairs?---I did.

45

And why did you do that?---Because mum, I guess, wasn't in a position to. Dad looked after everything, so I just took it upon myself to – to sort of try and sort things out.

5 And what did you learn about their financial affairs?---I learned that they – they had had a number of loans with Suncorp, yes.

Okay. And how many loans did you discover that your parents had with Suncorp?---After a bit of investigating I established that there were actually five  
10 loans.

Okay?---Yes.

And did you work out when Suncorp had given your parents these loans?---Yes, I  
15 believe it was 2013.

And could you work out how much money across the five loans Suncorp had loaned to your mother and father?---Yes, it was – it was on – almost a million dollars.

20 And was your mother aware of these loans?---No, she wasn't.

What did you think when you discovered that Suncorp had loaned almost a million dollars to your mother and father in the years immediately prior to your father's death?---I was surprised that they were able to obtain loans for that amount,  
25 considering, I guess, the amount of work that dad was doing and the earnings that he was – he was making.

What did you know about how your father's business was doing during that period?---I mean, I didn't – I didn't see exact finances, but just reflecting on their –  
30 their lifestyle and the fact that dad would quite often ask me to borrow some money from me, I guess gave me an idea that he – he wasn't earning a lot of money.

Okay?---Yes.

35 And when you discovered these five loans that your parents had, did you think that your mother would be able to make the repayments on the loans?---No.

And why not?---Because she wasn't earning any money.

40 Did your mother have any income available to her at that time?---At the time the – the property up in Queensland, they were renting it out for money. I knew that that was an earnings that she was – she would have been receiving at that time.

45 So your parents had a property in Queensland?---Yes.

What sort of property was that?---It was a holiday home which they eventually – they rented out.

And why did they rent that out?---Because, yes, dad's work wasn't doing as well.

Okay. Did your parents own any other property?---No, but they had a – a block of land in a superannuation fund.

5 So was that superannuation fund a self-managed superannuation fund?---Yes.

And it owned a block of land did you say?---Yes.

10 Was that block of land also in Healesville?---Yes.

And do you know why that block of land had been purchased?---Yes. So dad bought that with his superannuation money with plans to turn it into a property that they could rent out and earn an income from.

15 What sort of property were they hoping to create on that block of land?---Like a warehouse factory type of structure.

Now, at the time of your father's death was there any structure on that property?---A very basic structure, yes.

20 Okay. And when you were going through your father's and your mother's financial affairs, did you discover any other liabilities that your parents had?---They were – there was a lot of bills.

25 And did you talk to the rest of your family about what you were going to do about the five Suncorp loans and the bills?---Yes. So we got together, my sister, my brother-in-law, my dad's twin sister, his brother, and myself just got together to work out how to tackle this – this situation.

30 The loans – at that time was it apparent to you whether they were home or business loans?---No. I just knew that they were loans.

Okay?---Yes.

35 So your family talked about how you were going to tackle the situation. And in the weeks after your father died, did you contact Suncorp to discuss the loans?---Yes. So I initially made a call to Suncorp where I obviously explained the situation that we were in. And the answer from the lady from Suncorp was just, "You need to sell the house." And that was the extent of the conversation.

40 I see. And why did you contact Suncorp, rather than your mother?---I guess, at that point, you know, we were all still coming to terms with obviously what had just happened, and I just took it upon myself to – to act on her behalf.

45 Okay?---Yes.

And what did you think of the response from Suncorp that the solution was just for your mother to sell the house?---Well, I wasn't happy with that solution.

5 And after that phone call did you take any further steps to communicate with Suncorp about the position your mother was in?---Yes. So I – we googled, obviously, what to do and we found on the Suncorp website that there's an application for assistance.

10 Had that been mentioned to you in the phone call with Suncorp?---No, it hasn't.

Okay. And you have exhibited as exhibit 1 to your statement a request for financial assistance form?---That's correct.

15 If we could have that brought up, it's SUN.0801.0002.1923. This is a document provided to the Commission by Suncorp. You've been shown a copy of this document. And does it appear to contain information that you and your family included in a financial assistance form to Suncorp on behalf of your mother?---Yes.

20 If we turn to the second page of that document. Who was it who provided this information? It was done online, was it, Mr Low?---Yes, it was done online. We all sat down as a family and filled this out.

Okay?---Yes.

25 And we see at the top of the second page what you said to Suncorp about the reasons why you were requesting financial assistance. And if we could have that blown up. We see that what you said on behalf of your mother was:

30 *My husband, Peter Julian Low, passed away on 9 November 2015. Peter was the sole breadwinner, as I do not work, and have been a full-time housewife for the past 30 years of our marriage. I am unsure how to handle the financial situation I find myself in and need time to settle the estate so I can fully understand my financial position. I know I need to seek the appropriate financial advice, so I can fully understand what action I need to take. I kindly ask for your consideration to postpone all loan repayments for 12 months so I can do all the things I need to do. Thank you for your compassion and consideration.*

40 That's the information that you provided to Suncorp?---Yes.

45 And if we look further down that page, we see that you have – I'm sorry, we might need to expand – there it is, sorry. I have it. Under Assistance Options – I had it – back under Assistance Options we see that you have ticked that what you are seeking for your mother was a postponement of loan repayments for 12 months?---Yes.

Why 12 months, Mr Low?---I guess the situation that we were in, losing dad the way we did, it had an enormous effect on all of us, obviously. Just to try and get your life

back to some sort of normality and dealing with this sort of finance was – it was a lot to take it. So we did ask for 12 months so we could sort of try and sort mum’s life out and just sort of try and get her – well, just everybody adjust to what has happened and then sort of tackle the finances. Yes.

5

I see. And on the third page of this document, the next page, we see that you gave information about your mother’s assets and liabilities?---Yes.

10 And you listed as your mother’s assets the family home and the value of that home. You listed the investment property in Queensland and the value of that property?---Yes.

15 And you listed the land that we’ve referred to, the block of land and the value of that land. Some money in savings account – savings accounts and some furniture and personal effects as well as a car valued at \$3000?---Yes.

You also listed your mother’s liabilities on the other side of the page. You listed the monthly repayments under the five Suncorp loans?---Yes.

20 Each of which required monthly repayments – four of them required monthly repayments in excess of \$1000 and one of \$560. And if we could pan out a bit so we can see the lower part of this page, we see there the figures of the total assets and the total liabilities. And if we turn to the following page, we see that you submitted a weekly – I’m sorry, a monthly budget for your mother which referred to a CSS  
25 pension. Could you explain what that was?---Yes. So my dad, previous to this job, worked for a government organisation and he was entitled to that pension and that, we found out, was able to be passed to mum.

I see?---Yes.

30

So there was the pension amount, and then rental income which was rental income from the Queensland property?---Correct.

35 And then we see in your budget summary at the bottom of the page that the budget showed a monthly shortfall of your mother’s ability to meet her expenses of \$2894?---Yes.

Is that right?---Yes.

40 That was what you and your family worked out from looking at your mother’s financial situation?---Yes.

She was just short of \$3000 short of being able to meet her monthly liabilities?---Yes, that’s correct.

45

This request for financial assistance was submitted online, you said?---Yes.

And did your mother subsequently receive a document in the mail that she had to sign as part of this application?---Yes.

5 And we have that document as part of exhibit 1 to your statement. It's  
SUN.0603.0002.1927. We see there your mother signed this document on 12  
December 2015. So that's about a month after your father's death; is that  
right?---That's correct.

10 And how was your mother coping at this time when this application for financial  
assistance was submitted?---Well, she wasn't really coping.

Okay?---Yes.

15 And in January 2016 did your mother receive a response to this request for financial  
assistance?---Yes.

And you've annexed that as exhibit 2 to your statement?---Yes.

20 SUN.0603.0002.1928. It's a two page document. It would be helpful if we could  
have both pages on the screen. So this is a copy of the letter that your mother  
received?---Yes.

25 And we see from that letter that Suncorp refused to postpone the loan repayments for  
the 12 months you had requested?---Yes.

And instead Suncorp offered to adjust the arrears on the loans to show that they were  
no longer past due, and to defer the next four monthly payments on each of the  
loans?---That's correct.

30 And do you – we see also from this letter that Suncorp made clear that it reserved its  
right to recalculate the repayment amounts on each loan after this time so that each  
loan would still be repaid in full on the last day of the term for each loan?---Yes,  
that's correct.

35 And what did you understand that to mean?---I mean, we were disappointed we  
didn't get the 12 months, but obviously being given four months where we didn't  
have to, I guess, think about having to come up with that kind of money was – it was  
okay, but it wasn't ideal.

40 And wow did your mother react to receiving this response?---Well, it just made her  
very worried. At a time when she shouldn't be, I guess, worrying, you know, a  
month after losing dad, we – yes, we – it just made her very stressed.

45 And we see that this letter was framed as an offer that required your mother's  
signature to accept it. Do you see that at the bottom of the second page?---Yes.

Your mother accepted the offer?---Yes.

And why did she do that?---Well, I guess at that point we felt there was no other option. We had asked for 12, we expressed our view, we were given four. So that – we just accepted it.

5 Yes?---Yes.

And after this, did you contact Suncorp about trying to consolidate the loans?---Yes. Yes, I had a conversation with somebody at Suncorp asking if we could consolidate those five loans because they were all at various interest rates, some of them were quite high. And if we could put it into – yes, just into one loan, which would have reduced the amount of interest, and then would have at least given either my sister or I a chance to at least pay the interest.

10  
15 What sort of interest amounts were accruing on these loans at this time?---It was approximately \$1200 a week.

Okay. And did Suncorp permit you to consolidate the loans?---No.

20 Did you try and refinance the loans through other lenders?---Yes. We had a couple of conversations with other borrowers, but also we had a very short timeframe, and because there was so many of us trying to assist, it was – it was virtually impossible to get this organised.

25 Did you have any success with refinancing - - -?---No.

- - - the loans through other lenders?---No, we didn't.

30 And during this time you say in your statement that you and your family started looking into the financial position of the business at the time that the loans were approved?---That's correct.

And you say that you were concerned that your mother and father had not been in a position to repay the loans when they were approved by Suncorp?---Yes.

35 And you decided to make a complaint to FOS about Suncorp's conduct in approving the loans in the first place?---Yes.

You made that complaint, you tell us in your statement, in May 2016?---Yes.

40 How did you learn about FOS?---I was aware of an ombudsman, because I had actually used one before with a phone bill, so I – I googled it and came across the FOS process, and that's how I – that's how I went ahead with it.

45 And at exhibit 3 to your statement, you've annexed documents that contain your application to FOS; is that right?---Yes.

And that's FOS.0028.0001.0054. And there's a series of pages that follow that in which you summarise the matter that you were taking to FOSs attention. And after you made this complaint to FOS, were you given a point of contact at Suncorp?---I believe so, yes.

5

Yes. Now, the name of the person who was your contact point at Suncorp is the subject of a non-publication order. But the person was a customer relations banker at Suncorp, so I'm going to refer to her by that title. I will refer to her as the customer relations banker?---Okay.

10

Now, in December 2016, after you lodged this complaint in May 2016, FOS made a recommendation in relation to your complaint; is that right?---That's correct, yes.

And you've annexed a copy of that recommendation to your statement as exhibit 4?---Yes.

15

I want to summarise the effect of that recommendation and see if this accords with your understanding of it. The recommendation was that Suncorp's approval of one of the five loans that were extended to your mother and father was irresponsible; is that right?---That's correct.

20

And the loan that FOS indicated was irresponsible was the final loan that was granted to your mother and father?---Yes.

And that was a business loan for \$240,000?---Yes.

25

And FOS referred to that loan in its documents as business loan B?---Yes.

Is that right?---Yes.

30

And it was granted in 2014; is that right?---Yes.

And it was granted for two purposes. One was to provide working capital for your father's business, and the other was to provide money to fund construction of the factory or warehouse on the block of land that your parents owned; is that right?---That's correct.

35

And FOS said that Suncorp had acted irresponsibly when it approved that loan, because it had already lent your father \$200,000 a year earlier in 2013, which was also to complete construction of the factory or warehouse on the property; is that right?---Yes, that's correct.

40

So your father shouldn't have needed a further loan to fund construction that should have already been completed with the money under the previous business loan; is that right?---That's correct.

45

Did your father use the \$200,000 that Suncorp advanced in 2013 to build the factory or warehouse on the block of land?---I don't believe so.

And do you know what he did with that \$200,000?---No, I don't.

5

As far as you're aware, does your mother know what your father did with that \$200,000?---Unfortunately, she doesn't.

Okay. And FOS found that Suncorp had not made adequate inquiries about the purpose of that final loan in 2014, or the status of construction of the factory, and FOS said that if the inquiries had been made, they would have revealed that the funds hadn't been used for the construction of the factory; is that right?---Yes.

10

And FOS also found that Suncorp had not acted irresponsibly when it approved the other four loans in 2013. It said your mother and father at that time could afford the loans; is that right?---That's correct.

15

Did you accept this recommendation from FOS?---No, I didn't.

Why not?---I obviously agreed with their ruling of the fifth loan, business loan B.

20

Yes?---But I still disagreed that they were in a position to afford the four – the four loans prior to that.

Yes, I see. And because you didn't accept the recommendation, the matter then went on to a formal determination by a FOS ombudsman; is that right?---Yes.

25

And in early 2017 after the recommendation, but before any determination, did you and your mother decide to sell the family home?---Yes.

30

And why did you decide to do that?---Because I had done some research and generally speaking, when a – a FOS case goes from a recommendation to a determination, it very rarely changes.

Right?---And I was obviously very aware of the interest that we were being charged at the time which was still accruing on those loans, and also I'm aware that if a bank was to – to take the house and sell it, it could be done in a very quick fashion, and it could be sold a lot cheaper. So, yes, I – I took the initiative to – to get the house ready for sale.

40

And in February 2017 did you receive an offer for your mum to buy the home?---Yes, we did.

And was that offer subject to finance?---Yes, it was.

45

And did you call Suncorp to tell them that you had that offer?---Yes.

And did you speak to the customer relations banker who I referred to before who was handling your FOS complaint?---Yes, I did.

5 And what do you recall of that conversation?---When I spoke to that person, they straight away told me of their dissatisfaction of the fact that I had decided to sell the family home. They reiterated to me on numerous occasions that they had the power to cancel the sale, to evict my mum from the house, and to sell it according to – to subject to what they’re happy with. Yes.

10 Now, I want to ask you what you did as a result of that conversation, but before I ask you that, can I ask how you felt as a result of that conversation?---I was shocked to begin with, but I was just very worried and – and it’s scary, you know. We were – we felt we were doing the right thing by selling the home and providing the bank with more than 80 per cent of the money that was being owed. It would have  
15 stopped those interest rates, that interest incurring. And I – I was – I was very taken aback, you know. I had come to this bank with a solution, and they weren’t working with me as a team. They – they were just constantly reminding me of the power the bank had and what they could do in order to basically go against everything that I was doing.

20 What did you intend to do with the proceeds of sale?---With the proceeds of the sale, I knew that the – the first four loans equated to just under 800,000, and the sale of the home would have just been over 800,000. So I knew that that would have paid out those loans. So that – that’s what I had intended to – to achieve was to sell the house  
25 and at least pay back those loans that at that point had been deemed responsible, and – and stop that interest.

And I said I was going to ask you about what you did as a result of the conversation. Did you raise concerns about this conversation afterwards?---I – yes. I – I asked to  
30 speak to that particular person’s manager, yes.

And what do you recall of your conversation with the manager?---I obviously – I spoke to them just regarding the – the nature of the call. My intentions of the call. But what was spoken about and just how I – I just thought it was – it was unrequired  
35 and it was – it was distressing.

Did you make a complaint about that person?---I did make a complaint.

40 And what was the result of that complaint?---Nothing.

Okay. Did you also send an email to the case manager at FOS telling her about this conversation?---Yes.

45 And you’ve annexed the email you sent to that case manager to your statement as exhibit 6?---Yes.

Okay. Now, did the sale of the family home end up proceeding at this time?---Unfortunately, that sale fell through.

5 Okay. And with the sale having fallen through, in February 2017 did you receive a copy of the determination that the FOS Ombudsman had made?---Yes, I did.

10 And we will go to that. It's exhibit 7 to your statement. FOS.0028.0001.3071 is the covering letter. And the determination follows at 0028.0001.3074. The determination was made on 23 February 2017; is that right?---That's correct.

And were you right? Was the determination ultimately in the same terms as the recommendation that had been made?---Yes, it was.

15 Okay. So FOS again determined that Suncorp had acted irresponsibly in approving the 2014 loan, but not in relation to the four prior loans?---Yes.

Now, could I ask that you look at 3076 within the determination. We see there under the heading Determination that it records that the:

20 *Determination was substantially in favour of the FSP –*

the financial services provider, Suncorp. And that the ombudsman agreed with the case manager's reasons for the recommendation and the recommended outcome:

25 *The applicant remains liable for the 2013 loans and the revised debt under business loan B as set out in section 2.4 of the determination.*

30 And what follows is a direction from FOS as to what was to occur as a result of that finding. Do you recall reading this, Mr Low?---I do.

35 And we see that what FOS directed was that within 14 days of the applicant's acceptance of the determination, Suncorp was to reduce the business loan B balance by approximately \$40,000 which would take it to \$222,000, approximately. That would be the revised debt. And it was to cease charging any interest and fees accrued on that account after 6 February 2017. So the amount that the business loan B balance was reduced by – did you understand that to be the amount of interest that had been paid to date on the loan?---Yes.

40 And then FOS says:

*It is also to apply any payments made to that account up until the date it applies the determination to further reduce any outstanding balance.*

45 The second part of what FOS says is:

*Having regard to FOSs expectations of the parties set out in section 3.4 of the recommendation, the applicant should provide Suncorp with a proposal for*

5                    *repayment of the 2013 loans and the revised debt. This proposal may be to pay the debts by sale of the security property, refinance, or a reasonable payment arrangement accompanied by a statement of financial position and supporting documents. Suncorp is to work with the applicant to attempt to agree on a reasonable arrangement to repay the debts.*

10                    What did you understand all of that to mean, Mr Low?---To be honest, at the time it was – I was reading through it and I – I obviously didn't understand that part enough, yes.

15                    Over the page, we see that it continues at 3077. Perhaps if we could have both of the pages on the screen. What FOS said was that:

20                    *If the parties are unable to reach an agreement for repayment of the debts within 30 days of the applicant's proposal, or if no proposal is provided, Suncorp may be entitled to commence recovery action with respect to the debts once the FOS dispute is closed. This may include taking possession of and selling the home and investment property.*

25                    Do you recall reading that?---I recall reading that.

30                    And what did you understand from all of that?---I understood that if – yes, if we didn't come to an agreement with the bank that within 30 days they were able to enforce that.

35                    Okay:

*And if the applicant does not accept this determination –*

40                    FOS said –

45                    *within 30 days of its issue, then Suncorp is not required to comply with it. Suncorp will be entitled to commence recovery action with respect to the debts once the FOS dispute is closed. This may include taking possession of and selling the home and investment property.*

                         Do you recall that?---Yes.

                         Okay. Now, in March 2017 did you accept this determination on your mother's behalf?---Yes.

                         And why did you do that?---Well, because there was – again, the interest rate was incurring at such a high rate, what else can you do? Like, we just had to accept it, and – and move forward.

                         And in April 2017, your mother entered into a contract to sell the family home for \$815,000?---Yes, that's correct.

And in early May did you get in touch with Suncorp again?---Yes.

And did you again speak with the same customer relations banker?---Yes.

5 And you've annexed a copy of emails that you exchanged with that person in early May as exhibit 8 to your statement. If we could go to those. They're at SUN.0603.0002.0030. And could I ask that you turn to 0038. We see an email at the top of the page there from you to the customer relations banker?---Yes.

10 On 2 May. You tell her that you've:

15 *...tried to call twice today to no avail. Suncorp has not contacted us in regards to the ombudsman's outcome. Is this still yet to happen or have we been forgotten? Mum has received a couple of letters stating the interest-free time period expires this month, but the ombudsman's ruling had not been addressed. Given the bank is enforcing interest during this time it's in our best interest the address this now.*

20 So that was the email you sent to the customer relations banker on 2 May?---Yes.

And the customer relations banker came back to you at 0036, and we see the email from her at the bottom of that page, and perhaps it would assist if we put the subsequent page on the screen as well, so we can see the entirety of the email. Was the effect of this email that the customer relations banker said that it was up to your mother to provide a proposal about how she would repay the debts under the loans?---Yes.

And we see at 0036 that you asked for information about each of the loans?---Yes.

30 And you said that you would submit a proposal the following day?---Yes.

You said earlier that you didn't understand part of the direction from FOS correctly. Were you referring there to the fact that you didn't understand it was incumbent on your mother to initiate this process?---Yes. I – I must have misread the fact that it was up to us to approach the bank with - - -

And when this was drawn to your attention we see you promised a proposal the next day. Did you provide a proposal the next day?---Yes, I did.

40 Okay. And we see that proposal at 0032. Again, it would be useful if we had the subsequent page on the screen as well. And we see there that you told the customer relations banker that you and your mum had made the decision to sell the family home and that there would be 800,000 left from the proceeds of sale?---Yes.

45 That was after the real estate agent had taken his fee?---Yes.

And you said that your mother would use this money to settle the four loans from 2013?---Yes.

5 And you wanted the remainder of the proceeds of sale, approximately \$30,000, to be given back to your mother?---Yes, that's correct.

Why did you want that amount given back to your mother?---Because – well, just so she could use money to rent and just for expenses.

10 And you made a proposal in relation to business loan B which we see on the subsequent page. You say:

15 *FOS formed the view that there was maladministration, as it felt Suncorp should have made further inquiries about why further funds were needed for the construction, and also restricted access to the loan funds via a progress loan facility as opposed to a standard loan.*

And you then refer to the account and the outstanding amount of \$221,000. You say:

20 *Business loan B as stated was irresponsibly lent. A payment plan will be set up where Jennifer will pay this loan back as it stands at \$10 a week.*

?---Yes.

25 And you then provided a screenshot of your mother's account balance in her bank account?---Yes.

Now, Suncorp wasn't happy with this proposal?---No, they weren't.

30 Did Suncorp ask for a statement of your mother's financial position and other supporting documents?---I believe so.

35 And how were you finding your communications with the customer relations banker about these matters in this period?---Well, I mean, you can – very poor. You can see she's just cut and pasting answers to me. It's very impersonal, it's – yes. It's exactly the reason why I didn't want to deal with her.

40 And did you again raise concerns with Suncorp about your interactions with this customer relations banker?---Yes, I did.

And what happened after you raised the concerns this time?---Nothing.

45 After you raised those concerns, did you start dealing with different people from the bank?---I did. I was contacted by a couple of different people from – from that time.

And you refer in your statement to a conversation you had with one Suncorp employee in which you say you were told that your mother could use the proceeds of

sale to pay off the first four loans and that the surplus would be returned to her?---Yes, that's correct.

5 And how did you feel after that call?---Somewhat relieved that something was actually going our way.

And you also refer in your statement to a subsequent conversation you had with another Suncorp employee named Darren?---Yes.

10 What do you recall of that call?---I received a call from – or I spoke to a Darren, and in that conversation we were speaking about how those four loans, the – would be paid out by the sale of the family home, and subsequently the surplus from the sale of the home, once it has paid those four loans off would be sent back to my mother. He agreed with all of that, but then towards the end of the conversation I realised that we  
15 were on a different page, and that he was allowing mum to keep the surplus funds as long as we agreed to their terms.

And what did you understand their terms to be?---That we repaid back the entirety of the fifth loan by November that year.

20 After this call, did you send an email to Suncorp asking for confirmation of this in writing?---Yes, I did.

25 Why did you do that?---Because I had been speaking to a number of people at Suncorp, and my dealings there on a number of occasions, where I'm having to explain the situation what had happened with dad and explained everything in great detail, every time I'm speaking to somebody there is very frustrating, and obviously the conversation I had previously to Darren, and the conversation that I've had with Darren was different. So I wanted in writing that I had spoken to somebody, they  
30 had agreed to give mum back the surplus funds after we paid out those four loans and that – and at least then I had proof of the conversation.

35 What did you think about the proposal that your mother would be required to pay back the entirety of business loan B in six months?---Ridiculous. I think considering this loan has been deemed irresponsibly lent it is ridiculous for the bank to think it can get the entirety of the money back in six months.

40 And you've annexed the email that you sent asking for this in writing as exhibit 9. And that shows that you sent that email on 22 May 2017?---Yes.

And you've annexed the response that you received to that email as exhibit 11?---Yes.

45 I'm sorry, I may have that exhibit number incorrect. I'm sorry, just excuse me for a moment. It's exhibit 12 I should be taking you to, Mr Low?---Yes.

So the response was a letter dated 12 June from Suncorp; is that right?---Sorry, I may not have the right – I’m on number 12.

5 Yes. So I’m sorry, I think I may have confused you, but the email that you sent asking for the offer to be put in writing - - -?---Yes.

- - - was exhibit 9, sent on 22 May 2017?---That’s correct.

10 Did you receive any email response to that?---No.

And was the first response you got to that the letter that I’m showing you on 12 June 2017?---Yes.

15 And did you receive or did your mother receive that letter on 12 June 2017?---No, she didn’t.

Do you recall when she received it?---Approximately 23 June.

20 Okay. And the letter contained an offer in relation to the repayment of the five loans; is that right?---That’s correct.

And the offer was expressed to be open until 19 June, seven days after the date of the letter?---That’s correct.

25 And that date had passed by the time you got the letter?---Yes, it had.

30 And did you understand the offer in this letter to be the offer that Darren had discussed with you which was that the proceeds of sale would be used to fully repay the four loans from 2013, the surplus would be returned to your mother, and your mother would have six months, until 30 November 2017, to repay the entirety of business loan B?---Yes.

Did you discuss this with your mother?---Yes, I did.

35 And what did you and your mother think about this letter?---Well, we weren’t happy with it.

40 What was the outstanding amount on business loan B at this time?---Approximately 221,000.

And after you received this letter, did you contact Suncorp again?---I believe so, yes.

45 And we have an email that you sent to Suncorp which is annexed to your statement as exhibit 13. Is this the email that you sent in response to the letter dated 12 June?---Yes.

We see that you’ve sent this to a Suncorp person. You say:

*As discussed with you on the phone yesterday, we received the letter on Friday, 23 June. It was dated 12 June requiring a response by 19<sup>th</sup>. Obviously this timeframe was unachievable, and if that could please be rectified. Reading through the letter it reads fine. In relation to point 4 –*

5

Now, point 4 was the paragraph that required your mother to repay business loan B in six months?---That's correct.

And you said to Suncorp:

10

*Since the loan was deemed by FOS to have been irresponsibly lent we propose it be repaid according to the existing pattern of repayments being \$1001.88 per calendar month. Although this amount was for interest only, as there is now no interest payable on the loan these repayments will go entirely towards the principal. This will leave the parties in a similar position to their position prior to the FOS determination with the key difference being that, in accordance with the determination, Suncorp will no longer receive interest payments on this loan. Suncorp will still receive repayment of the principal and that repayment will occur more quickly than it otherwise would have under the previous interest-only repayment arrangement.*

15

20

Now, did you have some assistance in drafting this email, Mr Low?---Yes, I did.

And who did you get that assistance from?---Through CALC.

25

The Consumer Action Law Centre?---The Consumer Action Law Centre, yes.

Now this was, as we can see, an offer to continue with the existing repayments for business loan B?---Yes.

30

You received an email from Suncorp in response to this proposal which you've annexed at exhibit 14 to your statement?---Yes, that's correct.

We see there that the response the next day was:

35

*Thank you for your email. Regrettably, what you have proposed is not able to be facilitated by the bank, as what is being requested is essentially an interest free loan spanning 17 years. The bank is content to grant further time of up to 12 months to refinance this facility under the same conditions and can amend the existing offer dated 12 June as you state that you only received this 23 June. The bank confirms that it is in a position to settle on the Healesville property. Please contact us to discuss.*

40

Now, you've annexed your response to this email as exhibit 15 to your statement?---That's correct.

45

We see a response there on the same day. Did you have assistance with drafting this response as well, Mr Low?---Yes, I did, through – through the same avenue.

5 Yes. And if we could have both the first page and the second page on the screen, we will see the entirety of that email. And in that email back to Suncorp, drafted with the assistance of the Consumer Action Law Centre, you reiterated that business loan B was irresponsibly lent?---Yes.

10 And you repeated your proposal to make – to continue with the existence repayments of \$1101 a month until the principal was entirely repaid?---That’s correct.

And do we see that, approximately an hour later, you received a response from Suncorp at the top of the page:

15 *Thanks again for your email. At this juncture the bank believes the offer currently put forward is fair and reasonable and again state that we are unable to facilitate your proposal as it stands.*

20 ?---Yes, that is correct.

After this did you contact FOS again to seek assistance?---Yes, I did.

25 You’ve annexed an email that you sent to FOS as exhibit 16 to your statement?---Yes, that’s correct.

And if we could have both that page and the subsequent page on the screen. We see that you said to FOS:

30 *As you can see from today’s exchange of emails between ourselves and Suncorp, the bank is refusing to accept our proposal for repayment of business loan B. We believe that our proposal is reasonable as it preserves the positions of the parties but for the elimination of interest on business loan B in accordance with the FOS determination. Are you able to assist us in resolving this impasse by encouraging Suncorp to accept our reasonable proposal which we have put forward as required by the FOS determination? Suncorp has so far given no legitimate reason as to why it will not accept our proposal.*

40 And the following day, did you receive the response from FOS that we see on the left-hand side of the page?---Yes, I did.

And was the essence of that response that, because the FOS case was closed, FOS could not assist you?---Yes, that’s correct.

45 Okay. Now, on the same day as this email from FOS, 30 June 2017, the sale of the family home settled; is that right?---That’s correct.

After that did you receive, or did your mother receive, another letter from Suncorp dated 4 July which is annexed to your statement as exhibit 18?---Yes, that's correct.

That was another offer from Suncorp to your mother; is that right?---Yes.

5

And if we could have the first and second pages on the screen. We see in paragraph 2 that the letter records that settlement of the property has been completed and the proceeds have been used to fully repay the first four loans?---Yes.

10 Is that right?---Yes.

And we see that Suncorp offered to release the surplus sale proceeds if your mother agreed to repay business loan B by 31 July 2018, so 12 months later?---That's correct.

15

Now, did you make a further offer to Suncorp in response to this letter?---Yes.

And you've annexed that as exhibit 19 to your statement?---Yes, that's correct.

20 So in response to this offer, we see that on 21 July you said to Suncorp:

*In order to resolve this dispute on reasonable terms for both parties, our offer is that Jennifer pay \$275 per week until the loan is paid off (\$1191 per calendar month).*

25

So that was a slight - - -?---An increase.

- - - increase on the amount you had previously offered. So slightly more than the existing repayments that were required?---Yes.

30

And you annexed a statement of financial position to that email?---Yes.

Now, you made this offer even though your complaint to FOS was still on foot; is that right?---Yes.

35

And why did you do that?---We just – we just want this to finish. So we – we got together with mum and we were like can we – can we offer some more money, we can come together as a family and we will just chip in a little bit more, maybe – maybe it's just more money that they're after. So that's – that's why we did it whilst the FOS process was on to just – just bring this to an end.

40

And having made this offer, did your mother then receive a letter in – a letter in the mail which you have annexed as exhibit 20 to your statement?---That is correct.

45 So that's a letter signed by David Carter, the chief executive officer, banking & wealth, at Suncorp?---That's correct.

Did you think this letter was in response to the offer you had just made?---Yes, I did.

So the letter is addressed to your mother and your father; is that right?---Yes.

5 And Mr Carter says:

*We're writing to let you know the minimum repayment for your loan has decreased and the minimum repayment amounts will now be \$792.53.*

10 ?---Yes.

What did you think when you saw this letter, Mr Low?---Well, we were – I wouldn't say excited, but we were relieved that we thought Suncorp is listening to us, they've actually decided to work with us instead of against us, and they've – rather than meet  
15 what we had offered it they have actually lowered it, signed by the CEO. So we were – we were very relieved and happy that this had come to an end.

And shortly after you received this letter, did you get a call from Wendy Calcott at Suncorp?---Yes.

20

Did she tell you Suncorp had another offer for you?---Yes.

And what did you say to that?---So I received a call from Wendy Calcott and during that conversation she said to me, "We have an offer here we would like to present to  
25 you." And I was obviously quite happy at this point. And I said, "Yes, I know, we've got it in the mail. We're really happy. You know, we're humbled that the amount has been lowered." And obviously being signed by the CEO, obviously just reflects, I guess, the thoughts from the bank." To which Wendy then said, "I have no idea what you're talking about. The offer that we've got here is the offer that I'm  
30 referring to. What are you referring to?" And I stated, "I have a letter from you, signed by the CEO, with what I assumed was a proposal that the amount would have been dropped to \$792 .53." She said, "Yes, I have no idea what you're talking about." I then asked her what she was talking about. She then refused to discuss the offer that she was speaking about.

35

How did you feel after that call from Ms Calcott?---Frustrating would be an understatement. I mean – you know, this takes a lot out of someone. We were disappointed, yes.

40 And after you received – I'm sorry, after you had this telephone call with Ms Calcott did you send her an email the following day which is exhibit 21 to your statement?---Yes, that's correct.

45 So you asked her if she was able to email you the offers she mentioned on the phone last night in relation to the loan remaining?---Yes.

And in response, Ms Calcott said:

*Can you please send through a copy of the offer letter you received last Friday. I am not in a position to put any other offers to you until I can verify who has put that offer in writing to you. I have confirmed with the CEOs office that they have not made any offer to you under those terms.*

5

?---Yes.

What did you make of this, Mr Low?---The fact that this bank has no idea that they've sent me this letter, which has been signed by the CEO, I find very alarming.  
10 Who is running this bank? I was extremely concerned. I was worried. And I'm – I'm very nervous. Yes.

And a couple of weeks later did you receive another letter from Suncorp which you've annexed as exhibit 22 to your statement, a letter dated 22 August  
15 2017?---Yes, that's correct.

If we could have the second page of that on the screen at the same time, that would assist. Did this letter contain another offer in relation to settling the repayment of business loan B?---Yes.

20

Different to what was contained in the letter from the CEO?---Yes, that's correct.

And two options are given in this offer; is that right?---Yes, that's correct.

25 And the first option for your mother was that she would have five years to repay the loan as long as it remained secured against the Queensland property?---That's correct.

Is that right?---Yes.

30

And the other proposal was that she would have two years to repay the loan if it was secured against the block of land in Healesville; is that right?---Yes.

35 Now, how did you react to this new offer?---Well, we – I mean, it was – it was – it was okay. We were – we were happy that the bank was offering us some – some kind of a deal or an offer. The fact that we had five years, I guess, breathing space was somewhat of a relief. So, yes, it was acceptable.

40 Did you ask FOS to look at the letter that you got from the CEO and consider whether that had been misleading to you and your mother?---Yes, I did.

And did FOS organise a conciliation telephone conference?---Yes, it did.

45 Did you participate in that conciliation conference?---Yes, I did.

Now, this related to a second complaint that you had made to FOS; is that right?---Yes.

And that complaint was in relation to the handling of the negotiations after the determination that FOS had made the first time; is that right?---That's correct.

5 Now, the conciliation conference was held by phone. Who participated in the conference apart from you?---So it was myself and my mother. It was our case manager at the time at FOS. It was Wendy – Wendy Calcott and the other representative from the bank that I - - -

10 The customer relations banker?---Correct, yes.

Were you surprised that the customer relations banker, about whom you had complained to Suncorp and to FOS, was involved in that call?---Yes, I was.

15 How did it make you feel to have her involved in that call?---Yes, I wasn't – I was not happy about it.

20 Were you given the option of proceeding with the conciliation conference without her participating in that call?---No, I wasn't. I – I specifically said when – when our case manager introduced the two people from Suncorp, as soon as that person's name was mentioned, I instantly said, "I have spoken to you both about – I've spoken to FOS and I've spoken to Suncorp about this matter. I do not wish this person to be on this phone call because they make me feel very uneasy and they are not someone that I would like to deal with."

25 And did the customer relations banker tell you in the conciliation conference that the offer contained in this letter, the 22 August letter, would only be open for a certain time?---Yes. I was told that if I was to progress that letter to determination, the offer at the time would be withdrawn.

30 When you say that letter, do you mean your FOS complaint?---Yes.

Yes. So were you told that, if you progressed with your FOS complaint to determination, Suncorp would withdraw this offer?---Yes.

35 Okay. And what was your reaction to that?---Well, it's – it's a kind of a threat. It's like a – well, yes, we didn't respond very well to that and we became very nervous.

40 And after the conciliation conference, did you receive a letter from FOS setting out its preliminary view on your complaint?---Yes.

And you've annexed that as exhibit 23 to your statement?---Yes.

45 And the preliminary view was that Suncorp hadn't misled you in the letter from the CEO, and that FOS was entitled to apply the surplus proceeds of sale to business loan B?---Yes.

And after that, did you make the decision to withdraw your FOS complaint?---Yes.

Why did you do that?---Because we were not sure what the banks were capable of doing, and that offer that was on the table was, I guess, better than nothing. And we were scared that if we did progress it and they – they were going to withdraw the offer, as they had stated, what were they going to do after that?

5 Did you subsequently receive a deed from Suncorp?---Yes.

And did that deed require your mum to repay business loan B in five years?---Yes, that's correct.

10 Did it contain a confidentiality clause?---Yes, it did.

And what was your reaction and your mum's reaction to that clause?---We obviously had a few questions regarding that – that clause, and a few requests which were not met.

15 Did you have concerns that that clause would prevent your mum from progressing another complaint that she had in the credit and investments ombudsman about the conduct of the broker who assisted your mother and father to get the loans in the first place?---Yes, that's correct. So there is also an investigation into the conduct of the broker which has been going by the CIO since March last year, and I requested that Suncorp email me in writing that that confidentiality clause in the deed would not conflict with anything that we needed to, I guess, submit or speak to the CIO about.

20 And did you get that confirmation from Suncorp?---No, I didn't.

And has your mum signed the deed that was sent?---No, she hasn't.

Why not?---Because we need that clarified.

30 And - - -

THE COMMISSIONER: How much longer do you expect - - -

35 MS ORR: Only two or three questions, I'm sorry, Commissioner.

THE COMMISSIONER: Yes.

MS ORR: I really just wanted to ask finally, Mr Low, having been through this process with Suncorp, what would you say about the impact that the process has had on you and on your mother?---It's – it's extremely stressful. I mean, the impact it has had on mum – she's not here today, because the – the pressure and the expectation – it just – everything the bank and obviously what has happened to my father, it has just – it's taken its toll on her, unfortunately. It has taken its toll on all of us. It's just very, very stressful and a lot of pressure, you know, just – and trying to live a normal life and work full-time. It has – it has just been very, very difficult.

40

45

Approximately how many people do you think you've dealt with at Suncorp over the life of this process?---Yes, it would be approximately 15 to 20 people.

5 And how many hours do you think you've spent trying to work out these debts on behalf of your mother?---Hundreds.

10 And do you feel that Suncorp showed compassion for you and your mother in the period following your father's death?---No. I don't believe Suncorp has shown us any compassion at all as humans.

I have no further questions, Commissioner.

THE COMMISSIONER: Ms Mitchelmore, how long would you expect to be?

15 MS MITCHELMORE: Commissioner, I have no questions for Mr Low.

20 THE COMMISSIONER: No question. Very well. Thank you very much for your attendance, Mr Low. You may step down and you're excused from further attendance and we will come back at five past two.

**<THE WITNESS WITHDREW [1.04 pm]**

25 **ADJOURNED [1.04 pm]**

**RESUMED [2.05 pm]**

30 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, the next witness is Mr David Carter from Suncorp.

35 **<DAVID ANTONY CARTER, AFFIRMED [2.05 pm]**

40 **<EXAMINATION-IN-CHIEF BY MS MITCHELMORE**

THE COMMISSIONER: Do sit down, Mr Carter. Yes, Ms Mitchelmore.

45 MS MITCHELMORE: Your full name is David Antony Carter?---That's correct.

And your business address is 266 George Street, Brisbane, in the State of Queensland?---That's correct.

Your current position is chief executive officer, banking and wealth, at Suncorp Group?---Yes.

Mr Carter, you've received a summons to appear at the Commission today?---Yes.

5

Do you have a copy of the summons with you?---Yes, I do.

Commissioner, I tender the summons.

10 THE COMMISSIONER: Exhibit 3.74, summons to Mr Carter.

**EXHIBIT #3.74 SUMMONS TO MR CARTER**

15

MS MITCHELMORE: Mr Carter, have you prepared a witness statement in relation to a request for evidence regarding Rubric 3-21?---Yes, I have.

Do you have the original statement there with you?---Yes, I do.

20

And the exhibits to that statement?---Yes, I do.

Mr Carter, is your statement true and correct?---Yes.

25

Commissioner, I tender the statement.

THE COMMISSIONER: Exhibit 3.75, statement of Mr Carter relating to Rubric 3-21 and its exhibits.

30

**EXHIBIT #3.75 STATEMENT OF MR CARTER RELATING TO RUBRIC 3-21 AND EXHIBITS**

35

MS MITCHELMORE: If the Commission pleases.

THE COMMISSIONER: Thank you. Yes, Ms Orr.

40

**<CROSS-EXAMINATION BY MS ORR**

**[2.07 pm]**

MS ORR: Mr Carter, you're the chief executive officer for banking and wealth at Suncorp Group?---Yes, I am.

45

And you've been in that role since September 2016?---Yes.

And before that you were the CFO of banking and wealth; is that right?---That's correct.

5 And you are the person with primary responsibility for the management of Suncorp-Metway Limited?---That's correct.

And that company is the banking entity within the Suncorp Group?---That's correct.

10 And you've been put forward by Suncorp to give evidence about Suncorp's business lending and about loans entered into with Jennifer and Peter Low?---Yes, I have.

And you've heard the evidence given earlier today by Mr Rien Low?---Yes, I did.

15 Thank you. Now, prior to making your statement, you were provided with an outline of proposed evidence from Rien Low and his mother, Jennifer Low; is that right?---Yes, I was.

And you read those outlines?---Yes.

20 And you responded to the content of those outlines in your statement?---Correct.

Now, because Ms Low – Ms Jennifer Low has not given evidence, I wish to tender her outline of evidence which you responded to in your statement. That is RCD.0024.0010.0001.

25 THE COMMISSIONER: Exhibit 3.76 will be outline of evidence of Jennifer Low, RCD.0024.0010.0001.

30 **EXHIBIT #3.76 OUTLINE OF EVIDENCE OF JENNIFER LOW  
(RCD.0024.0010.0001)**

35 MS ORR: And I will also tender the outline of evidence of Mr Rien Peter Low which you also responded to in your statement?---Yes.

That's RCD.0024.0010.0003.

40 THE COMMISSIONER: Outline of evidence of Rien Low, RCD.0024.0010.0003, becomes exhibit 3.77.

45 **EXHIBIT #3.77 OUTLINE OF EVIDENCE OF RIEN LOW  
(RCD.0024.0010.0003)**

MS ORR: Mr Carter, in 2013 Suncorp granted four loans to Peter and Jennifer Low?---That's correct.

5 And one of those loans was a business loan?---I believe so, yes.

And another was a business overdraft?---Yes.

For \$200,000?---Yes.

10 And the \$200,000 overdraft was sought to fund construction of a factory on land owned by Mr and Mrs Low through their self-managed superannuation fund?---Yes.

And Mr Low – Mr Peter Low – told Suncorp at that time that he could complete the construction of the factory for 200,000, or possibly for less than that amount?---Yes.

15

And that's why Mr Low wanted a line of credit for an overdraft, rather than a business loan because he expected that the funds required for completion were not going to reach \$200,000, and he wanted to avoid payment on the full \$200,000 of interest, if possible?---Yes, that's the notes we have.

20

Yes?---On the record, yes.

That's what the internal notes reveal?---Yes.

25 Yes. And the bank asked Mr Low for the expected costs to completion of the factory; is that right?---That's correct.

And Mr Low provided an itemisation of the construction costs?---Yes.

30 And based on that itemisation and other information provided by Mr Low, that loan – or that line of credit or overdraft, I should say, was approved?---Yes.

Thank you. And then in 2014 Suncorp granted Mr and Mrs Low a further business loan?---That's correct.

35

And that was for another \$240,000?---Yes.

And that's the loan that we've been referring to as business loan B?---That's correct.

40 And the documents annexed to your statement show us that at the time Mr Low was given business loan B, he was about 62 years old?---Yes.

Okay. Now, there were two purposes for that loan, as shown from the application documents; is that right?---That's right.

45

And the first was the same purpose as the 2013 overdraft. It was to complete construction of the factory on the property?---Yes, it was to complete construction, yes, for \$140,000.

5 That's right. So of the 240, 140,000 was sought for that purpose?---Yes.

And \$100,000 was sought as working capital for the business?---That's correct.

10 Okay. Now, that amount was advanced to Mr Low even though he had told the bank the year before that he could complete the construction of the factory for 200,000 or possibly less?---That's correct.

Now, FOS found that Suncorp had acted irresponsibly when it approved that loan?---Yes, it did.

15

And you've reviewed the files held by Suncorp in relation to those loans?---I have.

And on the basis of that review you tell us, in your statement, that you agree with the findings of FOS about business loan B?---Yes, I do.

20

Okay. In your statement you say that business loan B should not have been approved in the absence of a deeper exploration of the purpose for which the loan was sought; is that right?---That's right.

25 And you say that business loan B was approved when it shouldn't have been because of a failure of the individuals involved in the approval process to carefully consider and validate the purpose to which business loan B would be applied?---Yes.

30 Do you accept that a diligent and prudent banker, in assessing the application for business loan B, would not have approved the loan without making further inquiries about the purpose for which it was sought?---This is a vexed issue, if I may just expand on this a little bit. We have an existing customer whose repayments are in order. It is a loan that is well secured. And the initial inquiry into purpose, I think, was reasonable. So we did inquire as to purpose. We asked for some evidence as to  
35 what the funds would be used for. However – and I had a relative advantage in reviewing the file compared to the assessor in that I had just read the 2013 loan and went straight on to the 2014 loan. So I, of course, had just seen the quote to complete the building works in '13, so it was fresh in my mind. However it did –  
40 whilst it's possible there are overruns in a construction project, it would have been better to have then asked why funds were being requested when the information provided – the quotes for the cladding and the excavation work – looked very similar to the amounts from the previous year, and therefore I believe the banker – or the assessor – erred in not inquiring further as to purpose, having initially inquired as to  
45 purpose, being provided with some information, but not really then dug more thoroughly when the information appeared to be similar to what was on file the year before. Secondly, the working capital, it was not clear from the financial information

provided as to why the working capital was necessary, and that should have been explored further as well.

5 You say you had an advantage because you had just read the 2013 file?---That's correct.

Would you expect the people involved in assessing and approving the 2014 loan to have also read the 2013 file?---I think that would be best practice, yes.

10 Yes. And, in that case, your advantage was really not material. You did what should have been done by the people assessing the 2014 loan?---I think it's material in that I spent a complete focus on '13 and done the assessment on '13 first, so I have put more time to understand '13 first. And then moved on to '14.

15 Yes. But would you have expected the person assessing the 2014 loan to have done just that?---I wouldn't have expected them to have assessed '13 as if it was fresh and brand new, no. I would have expected them to refer to the information, but not to have completed a more thorough assessment again.

20 Even though that loan was only a year earlier?---Yes.

And it was another business loan sought for the same purpose?---Yes.

25 I just want to come back to the question I asked you, which is whether or not you accept that a diligent and prudent banker, in assessing that application for business loan B, would not have approved it without making further inquiries about the purpose of the loan?---I agree.

30 Thank you. In your statement you point to a number of specific failures by those at Suncorp involved in the approval of that loan. Firstly, you say that they failed to inquire as to why the funds advanced in 2013 had been insufficient to complete the construction work for which they had been advanced?---Yes.

35 Secondly, you say that they failed to compare the schedule of works that was provided by Mr Low in 2013 with the quotes that he provided in support of the 2014 application which showed an overlap between the nature of the works that had already been funded and the works that were still to be done?---Yes.

40 Thirdly, you say they failed to ask for receipts for the work undertaken using the proceeds of the 2013 loan to confirm that those funds had been used in line with the schedule of works that was provided?---Yes.

45 And fourthly, you say they failed to inquire as to why Mr Low's business needed to borrow more money to provide funds for working capital in circumstances where the balance sheet for the business that was provided to the bank indicated that the business had current assets of approximately \$130,000?---Yes. Well, the – there was no apparent need for working capital on the information provided; correct.

Yes?---and I think my statement says that it's and/or as to the purpose. Any one of those inquiries on the construction should have led people to – the person to – to more deeply inquire as to purpose.

5 Yes. You say in your statement that your view is that if those involved in approving the loan had taken any one or more of those steps, that would have caused further inquiries to be made about the purpose for the loan?---Yes.

Is that right?---That's correct.

10

But none of those steps were taken?---I can see no evidence of that on the file, no.

And did Suncorp ever work out what happened to the first \$240,000 that was advanced to Mr Low in 2013?---You mean the 200,000 – sorry - - -

15

I'm sorry, the - - -?---I don't mean to correct you.

No, you're correct. I apologise, Mr Carter. The 240 is the 2014 amount?---Yes.

20

The 200,000 in 2013; does Suncorp know what happened to that money?---No.

Okay?---Well, sorry, we did not know until the FOS complaint came through, and also the hardship request where we started to – it was apparent it was – it looked like the funds had not been used for the business.

25

Yes?---And then we get to that stage, yes.

Yes. And you accept that Suncorp acted irresponsibly in proving – in approving business loan B?---Yes.

30

Okay. Now, that wasn't the view that Suncorp took during the course of the FOS proceeding, was it?---Not through the first complaint, no.

35

No. At no point during that first FOS proceeding did Suncorp acknowledge to FOS or to the Lows that it had acted irresponsibly in relation to business loan B?---That's correct.

40

And why did that happen, Mr Carter?---I think, as I said earlier, the – this issue of purpose required a deeper level of examination and I think, again, when it was looked at as part of the FOS matter, it was insufficient examination of the purpose and the reconciliation between 2013 and 2014.

45

So there was another set of errors in the FOS process in terms of, again, at that second stage not looking properly at the purpose of the loan; is that right?---It's the same error repeated, yes.

Yes. By a different group of individuals; is that right?---I believe so.

Yes. Could I just ask that you be shown SUN.0603.0005.1647?---Which tab is that?

It's not part of your statement?---Okay.

5 It will come up on the screen, Mr Carter. So this is a letter sent by Suncorp to FOS on 14 June 2016. This is a letter that was sent after Mr Low lodged the first complaint about the five loans. And if we could have both that page and the second page on the screen. We see on the first page in the second last paragraph:

10 *Suncorp maintains the respective credit assessments were sound and does not accept that there has been any maladministration. In each of the loan applications, Suncorp completed the relevant credit checks and serviceability calculations.*

15 So that was the position that Suncorp took in the dealings with FOS; is that right?---Yes.

20 Now, this letter was written by the customer relations banker who is the subject of the non-publication direction; is that right?---Yes. Although if I may clarify, she's not a banker, she is an adviser in the group customer relations unit, which is independent of the banking team.

25 What position title does she have? We've used the title that appeared in emails; is that not the correct title?---I think the title in emails is adviser, group customer relations unit, or it could be – or alternatively group customer relations bank.

Right?---So apologise for the - - -

30 No, no, that's all right?---Again.

What title should I use when referring to this person, Mr Carter? What would be a correct - - -?---I'm happy with customer relations banker or adviser. Just for continuity, yes.

35 Okay. Thank you. Now, did that person write this letter?---I believe so.

Yes. I would have the final page - - -?---Yes, that's right.

40 - - - brought on the screen to show you, but her name is redacted, so that won't assist?---I'm happy to accept.

Yes?---Yes.

45 And that person, we assume, reviewed the file in relation to business loan B?---Based on my investigations, she – she reviewed the loan, yes.

As you have done in preparing for your statement?---Yes.

But your review led you to conclude that business loan B shouldn't have been approved for the reasons that we've discussed?---Yes.

But this person's review didn't lead her to form the same conclusion?---Yes.

5

And that's because, I think your evidence is that she, too, did not pay adequate attention to the purpose of the loan application in 2014?---Yes. I can find no evidence anywhere else to suggest to the contrary, no.

10 Okay. Thank you. I tender this document, Commissioner.

THE COMMISSIONER: Letter Suncorp to FOS, 14 June '16, SUN.0603.0005.1647, exhibit 3.78.

15

**EXHIBIT #3.78 LETTER SUNCORP TO FOS DATED 14/06/2016  
(SUN.0603.0005.1647)**

20 MS ORR: Now, before FOS made a final determination it made a recommendation; is that right?---That's correct.

In December 2016?---Yes.

25 And that recommendation is exhibited to your statement. It's part of your exhibit 26?---Mmm.

It's SUN.0603.0004.1582. Now, could we turn to 1592 in that – I'm sorry, this is the determination. The recommendation appears behind that, I think, in your exhibit

30 - - -?---I understand.

- - - Mr Carter. So the recommendation starts at 1592. And we see there the Issues and Key Findings in the recommendation. We see that FOS found at this stage that the approval of business loan B was irresponsible, taking into account factors that include, but are not limited to, the factors that you've acknowledged in your evidence so far today?---Yes.

35

Now, they were the assessment of affordability. We see these at the bottom of the page. Your assessment of affordability was dependent on development of the commercial property to generate rental or sale income to repay the loan.

40

That was the first factor - - -?---Yes.

- - - that FOS pointed to as to why this was an irresponsible loan. Secondly, the factor that you've pointed to:

45

*It did not make adequate inquiries in 2014 about the purpose of the additional request for funds or the status of construction on the commercial property.*

If we could have the second page brought up next to that and:

5

*Had it done so it would have found the borrowers had not used the business overdraft funds for constructions as intended.*

And the third reason FOS gave was that:

10

*Suncorp did not control the use of the business loan B funds where it was prudent to do so to ensure completion of the commercial property.*

So three separate reasons given by FOS there as to why this was an irresponsible loan?---Yes.

15

Now, in your statement you deal with the second of those?---Yes.

And you've given evidence about the second of those today. Do you accept that the first and the third were also reasons why this was an irresponsible loan?---I – when I reviewed the 2014 file, I stopped after the purpose failed. I didn't spend a lot more time on the 2014 transaction, but the first point is not unreasonable. The third point, I don't necessarily agree with FOSs view that those proceeds should have been controlled in that way. We did not have security over the commercial property. However, I'm happy to accept – well, I will step back. FOSs answer is a good answer. I agree with the answer. I didn't see a benefit in, you know, further investigating beyond that for the purpose of preparing for – for the hearing.

20

25

And is that because, as I understand it, the primary failure that you have focused on is the second failure, the failure to make adequate inquiries about the purpose of the loan?---Yes. As I said, when I went through the file consecutively, it stood out quickly, yes.

30

It stood out quickly to you but it didn't stand out quickly to the person who was handling this on your behalf in FOS, did it?---I can't speak for them, but it doesn't appear to have, no.

35

Yes. Thank you. And if we turn to 1596. There we are. We see at the bottom of that page that: in considering whether Suncorp acted irresponsibly FOS referred to the obligation of a lender at law and under the Code of Banking Practice to exercise the care and skill of a diligent and prudent lender in assessing whether a customer has the ability to repay a loan?---Yes.

40

And FOS went on to note – and we will need the next page on the screen as well – that:

45

*Whilst the FSP –*

that's Suncorp –

*is not a subscriber to the Code of Banking Practice, FOS considers that the Code of Banking Practice represents good industry practice.*

5

Now, is that incorrect? Is Suncorp in fact a subscriber to the Code of Banking Practice?---I believe so.

10

Yes. Thank you. And was at the time of this recommendation?---Yes.

Okay. Now, at 1598, FOS noted under the heading Did the FSP Act Irresponsibly? The third paragraph down that:

15

*Mr Low was about 62 years old when business loan B was approved and was the key person operating the business. The applicant did not work. In those circumstances, Suncorp was required to consider how they would repay the loans without substantial hardship after the applicant's late husband's retirement.*

20

?---Yes.

Do you agree with that? Was Suncorp required to consider that?---Yes, we were.

25

And did anyone consider that?---Yes, I believe so.

Okay. They go on at 1599 to a quite detailed consideration of Suncorp's conduct in approving the loan. Do you see that? And that continues over on to 1600?---Yes.

30

Have you read this before - - -?---Yes.

- - - Mr Carter? And you will see that the ultimate conclusion on 1600 in relation to the points that you've addressed in your statement is that:

35

*If further inquiries had been made in 2014 about the status of the construction and purpose of the funds requested, it would likely have determined that the applicant's late husband had not applied the 200,000 as intended. A prudent lender in these circumstances would not have provided an additional \$240,000 without further inquiries –*

40

You accept that?---Yes.

Continuing:

45

*...ensuring the funds provided would complete the construction as intended.*

Do you accept that?---Yes.

Continuing:

*And controlling the use of the funds such as via progress payments.*

5 Do you agree with that?---As I said earlier, I don't necessarily agree with that point.

Okay. But you agree you did not do that. Suncorp did not do anything to control the use of the funds?---No, we didn't.

10 And that contributed to FOSs finding that this was an irresponsible loan?---I accept that.

Thank you. Now, the Lows rejected this recommendation?---Yes.

15 And, therefore, it proceeded to a determination?---Yes.

And before the determination Suncorp put in further submissions about this?---Yes. Suncorp accepted the recommendation.

20 Yes?---And notified FOS quite early of that. We were then notified that the Lows were not accepting the recommendation, and so we chose to put in additional information, yes.

25 Yes. So you chose to maintain your position, which was that there had been no maladministration, even though you had seen the recommendation of FOS to the effect that there had been in the 2014 loan?---Yes.

And you put in further submissions pressing even harder with that point, did you not, Mr Carter?---Yes, we did.

30 Yes. Have you seen the material that was submitted in between the recommendation and the determination?---Yes.

Do you think that material should have been put in?---No.

35 What's your view of that material, Mr Carter?---I don't think it adds to a conclusion that the business loan B was a better loan for the sake of that information.

40 And can you explain to the Commission what that further information was that was put in after the recommendation and before the determination?---I may not get it exactly, but I recall it being a series of Google maps photos showing the property at different stages of completion.

45 And this is at the time of the recommendation of the determination?---At the time of the recommendation, not the time of the loan.

So years after the loans have been granted?---Well, if my memory is correct the first photo is prior to the loans, there is a photo around about the time of the loans, and then a final photo which is quite proximate to the date of the recommendation.

5 And what was the submission that was put in connection with those photos?---That the premises had moved from being relatively incomplete to, I think, something like 90 per cent complete.

10 Was the submission effectively that there was something misleading in the applicant's approach to FOS because the factory had, indeed, been completed?---I don't recall the specifics without looking at it now, but it was that the funds were likely to have been used to do the work.

15 Okay. When?---From the – I think the contention in the – in the response was that it had been used post the granting of the loan.

20 Based on the photos proximate to the recommendation?---Well, again, my recollection is the photos there are a series of photos, they're not – you know, they are a couple of years apart. So somewhere between 2014 and 2017.

25 Let's go to what FOS said about this in the determination, which is SUN.0603.0004.1582. And at 1591 – I'm sorry, I've got that number incorrect. 1589. I'm sorry, I will just make sure I have the right reference, if you would just give me a moment, Mr Carter. Okay. So 1589 we see the heading Did the FSP Act Irresponsibly When it Approved Business Loan B?

30 *The FSP Suncorp says the applicant applied the loan funds to build the factories. Suncorp said in submissions dated 14 February 2017 that based on Google Earth photos of the commercial property, dated February 2010, September 2014 and February 2017, it appears that the applicant's late husband did apply the loan proceeds from both business overdraft and the business loan B to complete the factories. The February 2017 photos indicate doors and entry of the building have yet to be completed. However, Suncorp considers the factories to be over 90 per cent complete.*

35 So that was the submission that was put by Suncorp prior to the determination?---Yes, I believe so.

40 And FOS rejected that submission, didn't it?---Yes.

45 And FOS found that the photos didn't change the findings made in the recommendation because although some further work appeared to have been done on the factories, this had no bearing on whether the decision to approve business loan B back in June 2014 was irresponsible?---I agree with FOSs findings.

Yes. So I should make clear, they said that whilst some further work appeared to have been done on the factories after September 2014, that had no bearing on whether approving the loan in June 2014 was irresponsible?---I agree.

5 Thank you. Now, the determination we see from 1590 was made by Mr Field, the lead ombudsman of banking and finance at FOS?---Yes.

And he found that the findings made by the FOS case officer in the earlier recommendation were correct?---And I agree with that.

10

Thank you. Now, before this FOS process commenced the Lows, as you heard from the evidence earlier, had sought hardship assistance from Suncorp in relation to the loans?---That's correct.

15 And could I ask that you be shown the first exhibit to Mr Low's statement, which is SUN.0603.0002.1923 at 0926 – I'm sorry, at 1926. So that's the request for financial assistance?---Yes.

Have you looked at this form before?---Yes, I have.

20

- - - Mr Carter. So you've seen the reasons that were given on the second page of why financial assistance was sought?---Yes, I have.

And you've heard the evidence about that earlier today?---Yes, I have.

25

You've heard that by this request, Mrs Low asked for 12 months - - -?---Yes.

- - - to figure out how she could repay the loans?---Yes.

30 Mrs Low didn't ask the bank to forgive the loans, did she?---No.

She just wanted to postpone the repayments on the loans?---That's correct.

35 And you can see the deficit on this page in the weekly budget that was done. So Mrs Low was \$2800-odd short on a monthly basis?---Yes.

Is that right?---Yes.

40 So Mrs Low couldn't afford to make the loan repayments?---That's correct.

The bank considered this application for financial assistance?---Yes.

45 And you've annexed to your statement a document that records the internal consideration of this request for financial assistance, which is at exhibit 28 of your statement, SUN.0603.0011.1194. You've seen this document before - - -?---Yes, I have.

- - - Mr Carter. And if we turn to 1195, we see the recommendation that was made by a person within Suncorp. This person notes:

5           *Suncorp customer two years with good repayment history. No previous hardship application. Mr Low died and wife is out of her depth in relation to financial situation and needs to obtain professional help. Consider 12 months requested is excessive, but consider four month deferral on loans and capital arrears is reasonable time for her to obtain help required.*

10       Now, that was the basis on which the decision was made to extend only a four month deferral on the loans. Do you stand by this assessment of Mrs Low's financial assistance request?---Yes, I do, and may I explain a little bit?

15       Yes?---Okay. So this is – unfortunately people do suffer from death or serious injury in a family or illness, and often we find that four months is about the right time for people to just get a base level of understanding of their position. And then we tend to have a discussion about what to do next. The purpose of hardship is to support people where there are likely prospects of being able to return the – the lending back into, you know, a language we use in here, good standing, the ability to continue to service the debts. It, by necessity, needs a finite period of time. It does get extended from time to time, but that's why – at four months it allows people to gather information together, get a feel for where they sit, and understand what the – whether there is the ability to return the lending to good standing over time or whether other decisions would need to be made.

25       Did anyone tell Mrs Low that this might be extended if she asked for it to be extended at the end of the four month period?---I don't know. I haven't seen anything that says that.

30       There's no evidence to suggest anyone told her that?---Not that I've seen, no.

35       So how was she meant to know that this was something that could be extended after a further discussion at the end of the 12 – at the end of the four months?---I don't know what was said at the time.

40       So she asked for 12 months and all that she is given is four months and she is required to sign a document that – accepting the offer that has been made. Do you think that she would have understood from that that four months was all that the bank was prepared to give her?---I assume so.

45       Are you saying the bank would have been prepared to give her more if she had asked again?---Again, the purpose of hardship is to provide people with some space while they understand what's happening. It is not uncommon for hardship to be extended. Equally, there are situations where hardship cannot be extended because it is only prolonging a situation that cannot return to good standing.

What - - -?---So it depends.

What did Suncorp think Mrs Low would be able to do in the four months?---Well, the initial information we received is that the customer needs time to understand their situation, was not aware of their situation. There were three assets – primary assets involved in the Lows situation: the house at Healesville, which we heard about this morning, the investment unit in Caloundra, and the commercial premises at Healesville. So there was opportunity to work out whether there was going to be sufficient income stream to service the debts, or whether potentially assets would be sold in order to reduce the debts.

10 Did you hear the evidence this morning about Mr Low’s request on his mother’s behalf for the loans to be consolidated?---Yes, I did.

And did you hear the evidence that Suncorp refused to permit the loans to be consolidated?---Yes, I did.

15 Do you stand by that decision?---I haven’t been able to find any record on file of that discussion. So I don’t – I am not suggesting it didn’t happen, I just can’t validate it.

20 No. I just want to understand what your position is about, assuming that did happen, whether that was the correct decision?---The situation here would be that we would have to have established the ability to repay and service – or service and repay the debts. So I don’t know whether that would have been the right decision or the wrong decision at that time without – there wasn’t information at this point in time that would have suggested the debts could be serviced on an ongoing basis.

25 Suncorp has a financial hardship policy, doesn’t it?---Yes, it does.

30 And financial hardship is defined in that policy as when a customer is willing and has the intention to pay, but is currently unable to meet their repayments or existing financial obligations; is that right?---Yes.

So Mrs Low clearly was suffering from financial hardship?---Yes.

35 And your policy makes clear that the requirements within it are to be carefully followed – and I will show you this reference if you need it – so that the banks regulatory obligations are met and reputation risk is avoided. Do you recall that in your policy?---I believe so, but I’m happy to accept it.

40 Yes. And what is the reputation risk that Suncorp is seeking to avoid?---People who have experienced financial distress – it’s not a position that people ever expected to be in, obviously, and it’s a very challenging time for them, it’s quite a challenging time for our staff who – who support them through it. That can cascade into a range of outcomes and that includes the – people who are dissatisfied with that process, or experiencing hardship, taking their concerns and issues into the public domain, into the media. When that happens, typically, the customer provides their view of the situation to the media but, in the absence of us being provided consent by the

customer – which rarely happens – we are unable to put any other alternative views in and the – the media on that is typically quite negative.

5 You said in that answer then – you mentioned what happens when your staff are supporting a person through financial distress?---Yes.

Do you think your staff supported Mr Low and his mother through their financial distress?---At this point in the hardship?

10 Well, I would like you to reflect on the entire experience firstly. Would you characterise this as an event in which Suncorp staff supported Mr Low and his mother through their financial distress?---Yes. Based on my reading of the file, the file notes, talking to some of the people who still work with us today who were involved, I believe the intent of the team involved was very good. I can see and hear  
15 from today – statement by Mr Low that the impact we may have had has not always been right and perhaps some of our communication could have been better. But when I look at the way in which it has been approached, I see good intention.

20 What do you see that shows that good intention, Mr Carter?---So if I may move forward slightly - - -

Yes?--- - - - from here to the post FOS determination period, FOS, as you heard this morning, provides for 30 days, for example, to reach agreement post determination, or the FSP or the bank, lender, is able to commence action to recover. We have not  
25 once commenced action to recover. We are 15 months down the track now, and we continue to have an interest-free, repayment-free residual debt, that is the residual of business loan B. We have gone through a process of offer, counter-offer, offer, counter-offer and tried to find a middle ground to support the Lows on the way through, but we have been unable to do so. So that’s what I mean by intent. I am  
30 happy to accept that some of the communication has had a negative impact on Mr Low and his mother.

35 So I think the essence of that answer is that you haven’t taken action to recover the debt, and that’s – that’s what’s demonstrative of the good intent; is that right?---Well, that amongst other things, yes.

Right. And you said that you thought you had tried hard to reach a middle ground?---Yes.

40 The most you’ve offered Mrs Low is five years to repay a debt on a 30 year term loan?---So the most we have offered is five years, interest-free and repayment-free, prior to either achieving clearance of the debt through either a sale of an asset, repayment – refinance of the debt or placing the loan on to commercial terms with a  
45 suitable arrangement which would require us to establish that Mrs Low could repay the debt in the time available.

Why won't you let Mrs Low continue to make the existing repayments on the loan until the principal is discharged?---That would amount to a 17 year interest-free loan.

Yes?---Correct?

5

Yes?---Yes. So that would effectively result in us going well outside what we believe both FOS and the consumer or – Consumer Action Law Centre would see as reasonable, which from the records that we have seen as part of this matter - - -

10 We can come to all of that?---Okay.

But I want to focus on you, on Suncorp, for now?---Yes.

Not what FOS thinks or anyone else thinks?---Yes.

15

Why will you, Suncorp, not regard as reasonable the offer that's been made – the last offer that's been made is to pay more than the existing repayments?---Mmm.

20 It has to be interest free, because FOS has told you that you are not permitted to charge interest on this loan. Why will you not let Mrs Low make more than the existing repayments through until the end of the loan term?---Because whilst it has to be interest free until we establish a reasonable period of time, beyond that time it does not have to be interest free.

25 I don't understand why you say that. Where in the FOS determination does it say that it's only interest free until a reasonable payment plan is created? It's interest free for the rest of the loan. That's the effect of the determination, is it not?---I disagree.

30 And could you - - -?---There is a residual debt.

Let's go to the determination?---Yes.

Can you explain that to me?---Yes, yes.

35

This is an important issue. So the determination is exhibit 26 in your statement, and 1584. So 603.0004.1584 is where we see what I think is the relevant part of the determination?---Yes.

40 The direction made by FOS - - -?---Yes.

- - - about how you were to deal with this matter - - -?---Yes.

- - - given that this was an irresponsible loan?---Yes.

45

Perhaps we could have the next page brought up as well so we can see the entirety of that direction from FOS?---Mmm.

Now, could you explain to me your understanding of what this permits you to do?---Yes. It – first asks the parties to try and come up with an agreed arrangement for payment of the revised debt. This may be to pay the debts by sale of the property, refinance, or a reasonable payment arrangement accompanied by some information to justify it. That the parties should work together. If they're unable to work – to reach an agreement for repayment of the debts within 30 days or if no proposal is provided, the bank may commence recovery action once the dispute is closed. And our view is that a reasonable period to continue the loan on an interest-free basis is 12 months – six to 12 months. And that is by convention. I - - -

10

Can we pause there?---Yes.

Because I do want to explore this?---Yes.

15 So there's nothing in this direction that tells us that, is there? FOS doesn't give any guidance about what a reasonable arrangement to repay the debts is. It just tells you that you're to go off and reach a reasonable arrangement to repay the debts?---I agree that's what that says.

20 Is that right?---Yes.

So you say Suncorp's view is that the outer boundaries of a reasonable arrangement to repay the debts are that the entirety of the debt has to be paid off within six to 12 months; is that right?---No. The entirety of the interest-free - - -

25

Yes?---As an interest free debt.

Well, that's the only debt left, isn't it?---Yes. But it's not the only potential repayment arrangement. So the debt is either cleared, refinanced – which would be clearing it.

30

Yes?---Or alternatively, a long-term repayment arrangement is entered into.

So the entirety of the debt is the 221,945?---Yes.

35

That's the debt that's been reduced to take off the interest - - -?---Yes.

- - - that you've already charged. You accept you're not permitted to charge any more interest?---Whilst that loan is on foot as it is, yes.

40

Yes. I'm not sure what that qualifier means?---Well, at this stage, this is a – this is a debt. It's not a – it's not a loan per se, it's a residual debt. I know that sounds pedantic, but we have not got a loan contract to take forward at this point. We have to try and work out a way to take it forward.

45

I don't understand that, Mr Carter. You do have a loan contract that's on foot with Mrs Low?---That's not my sense of it.

I don't understand where that sense comes from. Where in these paragraphs do we see anything from FOS that renders void or otherwise eliminates the contractual arrangement that you have with Mrs Low?---I don't see that, no.

5 It's not there, is it?---No.

Because FOS doesn't do anything to render void or unenforceable that contractual arrangement. Instead, in these subsequent paragraphs, we see that they're preserving your rights to take action under that contract?---Yes, correct.

10

So you want the contract in force for that purpose, so you can take enforcement action. But on the other hand, you're telling me that the contract somehow doesn't exist now?---So I'm, I guess, referring to the way this gets resolved is we continue for a period of time, we reach an acceptable arrangement – ideally. If we can't reach an acceptable arrangement, we are able to take – go – revert back to an alternative option. But that in reaching acceptable arrangement there is an acceptance in practice that there will not be a continuation of interest-free lending forever.

15

Why is that accepted in practice? We've seen nothing that reflects that in this FOS determination, do we?---I accept that it's not in the determination, yes.

20

What we see here is a statement from FOS that the applicant remains liable for the revised debt under business loan B?---Correct.

25 Which tells us that the loan contract continues?---So – that is not the practice of what happens in these situations.

How has that practice developed, Mr Carter?---My understanding is it's a practice that's developed across the industry. And it's an outcome that is consistent with FOSs expectations and, indeed, with other – other parties who often act on behalf of consumers.

30

Well, I want to put to you squarely, Mr Carter, that if that is a practice that's developed across the industry, it's an unacceptable practice because it does not accord applicants their entitlements to continue with the loan contract that remains in force?---I'm unable to opine on that. It's not - - -

35

So can I come back to my original question now that we've gone to these paragraphs, noting that your obligation under these paragraphs is to work with the applicant to attempt to agree on a reasonable arrangement to repay the debts?---Yes.

40

My original question was: why is it not a reasonable proposal to offer to continue to make the existing payments for the life of the loan? Can I just - - -?---Yes.

45

- - - make sure I understand your answer to that question?---So that – over a 17 year term that would essentially, depending on your view of the discount rate, represent

either a – somewhere between a 50 to 100 per cent write-off of the principal over the time.

5 And why should Suncorp not have to accept that when it was irresponsible lending by Suncorp that has caused this situation?---Firstly, I think the borrower has had the benefit of the funds, as per FOSs determination. Secondly, we – yes, we made mistakes in assessing the lending, but we were misled and deceived as to the purpose by the borrower, and we were misled and deceived as to the financial results of the business and the financial data provided to us by people outside of Suncorp. So  
10 whilst we made a mistake and we did not pick up that deceit, this is something that we have found ourselves in as a result of the misdeeds of others.

Well, that's not the way you've characterised this in your statement, Mr Carter. In your statement you accept that the fault for this lies with Suncorp in the errors that  
15 they made and the failures in their conduct in 2014 in approving this loan?---Yes, as to the purpose. I agree. And that's why I agreed with the findings of irresponsibility, yes.

I want to put to you that the approach that you take to this direction from FOS is an  
20 approach that penalises the applicant, and places an applicant who has succeeded in FOS in potentially a worse position than they were in before they commenced the application, because now they can't continue to pay principal and interest for the remainder of the term. Now they face you saying to them that the entirety of the loan has to be paid off within six to 12 months?---Yes. Arrangements need to be reached  
25 around the residual balance or the residual debt. There are several options to do that. We could only extend the interest-free period for a finite period of time before we wish to have a more permanent arrangement.

I want to put to you that applicants may not proceed with applications to FOS if they  
30 realise that this is what success looks like: success is you saying you now have six to 12 months to pay the entirety of the loan off, even though it was lent irresponsibly to you?---I accept that.

All right. Now, I want to take you to some of the details of the way that Suncorp  
35 engaged with the Lows after this FOS determination. You heard Mr Low's evidence that in February 2017, in between the recommendation and the determination, he contacted Suncorp to explain that his mother had received an offer to purchase the family home?---Yes.

40 And you heard his evidence about the conversation he had with a particular – I was going to say banker - - -?---Yes, I understand.

Perhaps adviser?---Yes.

45 In group customer relations, who told him on a number of occasions in that call that if she wasn't happy with the price of the home, Suncorp had the power to cancel the sale and evict Mrs Low so that Suncorp could sell the property?---I heard the

5 evidence this morning. I wasn't in the conversation. Our file notes have slightly different record. It has a record of the person relaying very similar information to Mr Low that had been relayed to him two days before by someone from FOS, but I can't – as to the specifics of the conversation, only the people who were in the conversation can know that.

You heard Mr Low's evidence about the impact that that telephone call - - -?---Yes, I did.

10 - - - had on him and on his mother?---Yes, I did.

And you heard his evidence that he made a complaint about the way that person conducted that telephone call to her supervisor?---Yes, I did.

15 You are aware that that happened?---Again, I am aware Mr Low's evidence. I cannot find a record, in preparing for this, in our system or in our notes of that complaint or a conversation occurring with the second person.

20 Assuming the conversation proceeded as Mr Low's evidence indicates it did - - -?---Mmm.

- - - what do you say as to whether that was an acceptable way for your representative to conduct that conversation?---If that is what had happened, it wouldn't have been acceptable.

25 You haven't found a record of the complaint, did you say?---Correct.

30 Have you found any record of that customer relations banker being disciplined in any way for the way she handled that call?---Not that call on 8 February, no.

35 Have you seen documents that suggest she was disciplined at a later time?---As Mr Low mentioned this morning, around about the 5<sup>th</sup> or 8 May – maybe 5 May, there was another call between that person and Mr Low. Mr Low did then speak to another person. That is recorded, as in there's a note about that conversation, and in that conversation a complaint is made about her conduct. And I see a record of people noting that. I see that – or in talking to the people involved, I understand they looked at the adviser's other matters in recent times, had no other evidence or suggestion of complaints made against her, but made the decision to defuse the situation to remove her from day-to-day engagement with Mr Low.

40 So she was taken off the file?---She was taken away from day-to-day communication with Mr Low. The reason she was not removed fully was that she had the knowledge of the matter as it had been proceeding.

45 Did Suncorp not think it would be best to ask her to impart that knowledge to someone else who could take over that role on the file?---No, I think we have a small

number of people who can manage these matters. and it is important to have continuity where possible. And may I - - -

5 Yes?---We did not necessarily accept – by removing her from the situation, we did not accept necessarily that she had done what had been alleged. All we wanted to do was reduce the tension in the relationship.

10 Why didn't you accept what had been alleged? Did you disbelieve Mr Low?---We just didn't have proof of it. So in fairness, we have an obligation to support our staff as well as listen to our customers.

15 And do you think you have an obligation to – when you say listen to your customers, and accept what they tell you?---Well, we defused it by removing her from the situation.

But - - -?---So we didn't – we didn't deny what had been said, we just saw the best way of dealing with this was to defuse it.

20 Did you accept what had been said?---We accepted that Mr Low was unhappy dealing with the person.

25 It seems that you're at pains to not concede that there was any failing in that person's conduct on that phone call; is that right?---I can't – I – all I have as evidence is her file note of the conversation, the file notes of others, and Mr Low this morning. So we have a difference of views. So I'm not saying it didn't happen; I just can't say that it did.

I see. All right. I just want to take you to some emails from around that time?---Yes.

30 That was in early May - - -?---Yes.

35 - - - 2017. Could I ask that you look at SUN.0603.0005.1513. So this is an email from the same person to others within Suncorp on 5 May 2017, and we see here that the customer relations banker is sending Mr Low's proposal for the repayment of the loans. Firstly – I'm sorry, if we go to the second page over – to Mr Ian Goldspring. I will wait till that comes up. We need that page and the page that follows so you can see the entirety of that email. Do you see that there, Mr Carter?---Yes. Yes.

40 Now, I appreciate that you have this in redacted form, but you've seen this document before, I assume?---Yes.

And you know it is an email from the customer relations banker - - -?---Yes, yes.

45 Thank you. And we see there highlighted in yellow at the bottom that she comments on the proposal:

*This proposal means loans accounts maintenance will need to manually do credit adjustments to reverse 0.01 per cent interest charged by Hogan forever.*

5 Can you explain what that means, Mr Carter?---Yes. Hogan is a system, the computer system. The system cannot accept a 0 per cent interest rate.

10 I just want to be clear about that. So your Suncorp systems do not permit a zero per cent – an interest-free loan to be recorded in your systems?---Yes. That’s my understanding, yes.

15 Why not?---I can’t tell you. I have inquired to confirm that as part of preparing for today. I’m told that 0.01 is the lowest it can go.

15 It’s the best you can do in your system, 0.01?---That is my belief – for a – for a loan.

15 So this customer relations banker is making sure that Mr Goldspring knows that the system can’t, in fact, deal with a 0 per cent interest loan without making manual credit adjustments?---I believe so.

20 I see. And we see that two days later – and now we need the page that’s on the left-hand side to be on the right and the previous page to be placed next to it, so we can see the entirety of the next email in the chain. So we need 1513 and 1514 on the screen. This is another email from the same person to a number of others within Suncorp, including Mr Goldspring, Mr Moldrich, and Wendy Calcott?---Yes.

25 And we see here that the customer relations banker is referring to dissatisfaction that Mr Low has expressed with her?---Yes.

30 And he is going to be told that now Darren or someone in retail recoveries will deal with him?---Yes, I believe that’s the thrust of that.

35 Then the customer relations banker goes on to give an account of various conversations that she has had, including with Mr Low, and she says that she has explained to Mr Low that generally the bank will decide which loans to pay off first?---Correct.

Is that right?---Yes.

40 Is that fair?---Yes. I think that’s – that’s the way our contracts enable us to deal with the proceeds of sale.

Even when one of those loans is the subject of maladministration?---I believe so.

45 So there was a desire within Suncorp to use the proceeds of sale first to pay off the loan that was business loan B, the loan that was subject of maladministration and second, to the loans that had been responsibly entered into; is that right?---Yes, and I believe that’s consistent with broader practice in the industry.

Do you think that's an appropriate practice?---I have not turned my mind to the question and in the end, in this one, we didn't do that. We paid off the interest bearing loans.

5 But that took some doing to get to that position, didn't it? This was the bank's original position: that the bank could choose which loan to pay off first and it wanted the loan that was the subject of maladministration paid off first?---That was the starting point in this conversation, yes.

10 And so why should a customer have to repay a loan that was irresponsibly advanced to them before other sound loans?---Well, I think in practice it would go back to the contention that the benefit was received for – for the loans. And those loans are, at that point interest free, so practice would normally be for that to be paid first. But we did not do that. We went above the practice.

15 I understand your evidence about that?---Yes.

20 But I am interested in this as the practice Suncorp adopts. And it's beneficial to the bank, isn't it, because that means the bank can terminate the loan that it's not receiving any interest on and keep the loans going that are profitable loans, the loans that it is receiving interest on?---That's correct.

25 Yes. But it's – it penalises the customer who has taken the time to get a finding that this is an irresponsible loan, thinking that that's ultimately going to be advantageous to them?---I am not sure I agree with penalises, but it resolves – it resolves a loan that the parties need to resolve within a period of time in this case.

30 In the way the bank wants that resolved?---That – it was – well, it helps both parties to get it resolved, doesn't it? Because if it's not resolved within a period, the bank is able to take enforcement action.

35 Well, let's come back to that. Assuming the customer is not in default, what enforcement action is the bank entitled to take on the irresponsible loan?---So my understanding of the way this works is that the residual or revised debt, which is the residual of business loan B, that arrangements should be – need to be agreed and if they can't be agreed, the loan contract, I presume, is considered to have become at an end. And that is why the determination says that if the parties are unable to reach agreement for that loan, then the – the FSP or the bank concerned is able to commence other actions.

40 And we've been over this already, and I don't want to go back to it in any detail, but you accept, don't you, that there is nothing in the FOS determination that suggests that the loan will be at an end if a reasonable repayment arrangement cannot be reached?---Well, I'm – I would – I am not a lawyer, but I read the paragraph that says if the parties are unable to reach an agreement within 30 days or if no proposal is provided, the FSP may be entitled to commence recovery action with respect to the debts.

That's under the loan contract, isn't it? Under the operative loan contract?---Well, I – I'm sorry, but I didn't read it that way.

Okay. Thank you. I tender this email exchange, Commissioner.

5

THE COMMISSIONER: Suncorp emails of May 2017 to Jackson and others SUN.0603.0005.1513, exhibit 3.79.

10 **EXHIBIT #3.79 SUNCORP EMAILS OF MAY 2017 TO JACKSON AND OTHERS (SUN.0603.0005.1513)**

MS ORR: All right. Can I take you, Mr Carter, to the letter that was sent to Mrs  
15 Low dated 12 June 2017, containing a formal offer?---Yes.

In relation to the repayment of these loans. That's exhibit 31 to your statement,  
SUN.0608.0001.0324. So this is a letter from Mr Moldrich, whose name we saw on  
20 an earlier email, to Mrs Low containing a formal offer in relation to the repayment of  
the facilities?---Yes.

And it's a letter expressed in strict legal terms. Do you accept that?---Yes.

Yes.

25

And it has a strict timeframe for acceptance?---Yes.

Which expires seven days after the date of the letter?---Yes.

30 And the offer in this letter was that the proceeds of sale would be used to pay the first  
four loans?---Yes.

So there has been a shift in the bank's position, as you indicated, about which loans  
to pay off first - - -?---Yes.

35

- - - by the date of this letter. The excess proceeds of sale will be returned to Mrs  
Low and she will then have six months until 30 November to repay business loan  
B?---Correct.

40 Yes. Now, I just want to put to you in relation to each of these offers that this was  
not attempting to agree on a reasonable arrangement with Mrs Low to repay the  
debts: this was the bank not wanting an interest-free loan on its books for any  
extended period?---I – I feel I've said before, I – I believe that this is reasonable in  
the context of acceptable practice. I am happy to agree that you believe it's not  
45 acceptable practice, but I'm – I'm – I'm trying to base it off the industry's approach  
generally.

And what if you take yourself outside the industry's approach, Mr Carter, and forget about that for now, and try and think about this in the context of this case?---Yes.

5 Was this a reasonable offer in relation to the repayment of these loans to Mrs  
Low?---This is a particularly unusual case, and I don't think there is a one size fits all  
solution. It is not – in our experience, we don't see a lot of occasions where there is  
a FOS determination where there is a residual or a revised debt when there are other  
– when there are – a situation like this, where there are multiple debts and there is  
10 something left behind. The complexity with this one with respect to the conduct  
around the origination of the loan, the misleading piece on the purpose, and also  
what transpires later in terms of the financial data that's – we've been alleged to have  
been provided with has been incorrect, the situation of Mrs Low at the end, the  
circumstances involving Mr Low's death, there is a lot of things happening in this  
15 loan. So I think in these situations, there needs to be a range of potential outcomes  
that are reasonable, and so, you know, I'm – I don't think there's a single answer is  
my short version.

20 Well, having considered all of the matters that you've clearly just turned your mind  
to, I'm interested in whether you regard this, in all of those circumstances, to have  
been a reasonable approach to Mrs Low and her situation?---I do. I do believe it.

To repay the \$220,000, in full, in six months?---So I understand, as you said, this is a  
very legal looking letter.

25 Yes?---And I – when I read it through the eyes of someone who is not familiar with  
banking, I understand why that impact is there, and our – in practice, what happens  
with this would be that arrangements would occur either to clear the loan, to  
refinance the loan, or to put it on to a commercial terms basis and a longer term  
repayment. So practice would normally not be to have a long-term interest-free loan.

30 I'm just not sure I got an answer to my question in all of that, Mr Carter, but  
- - -?---Well, at the end of November that loan will have had approximately nine  
months as interest-free and repayment free. And, again, our understanding of what is  
acceptable practice is six to 12 months would be acceptable practice.

35 Yes. All right. Can we turn then to the letter that was received by the Lows with  
your name - - -?---Yes.

40 - - - on the bottom of it. That is exhibit 20 to Mr Low's statement. It's  
RCD.0014.0006.0001. You have seen this letter before, Mr Carter?---Yes.

45 What explanation can you give to the Commission about why Mrs Low received this  
letter?---Yes. Upon the sale of the Healesville property, the surplus funds were  
applied to business loan B. That reduced the balance. The system automatically  
triggers a letter when either interest rates or – sorry, when repayments necessary to  
clear the loan over the remaining term can change. And so with the reduction in the  
principal, with the 0.01 but the 0 per cent interest rate applying to the loan, the

system has automatically calculated that in the loan term remaining – because we have not reached agreement on the revised debt so the loan is in situ – then that level of repayment would clear the loan over the remaining term. Now – so I heard Mr Low’s – in fact, in reading his statement yesterday when it came through, we did not see – when we looked at this matter when it rose at the time, we just did not see how – we did not realise the impact that had or the – did not see that someone would see this as being an offer to extend. It did not enter the mind of people at the time. I think as Mr Low expressed himself this morning, his initial reaction from us through the people he dealt with was, “We didn’t know what the letter was.” And so we were – we – I understand the impact. I can see why it had that impact. But it was not something that we were awake to at the time.

And what do you think of the evidence Mr Low gave about the way the bank handled the conversations with him in the light of his receipt of this letter? Have you heard that evidence earlier today?---I did. And if I – paraphrase - - -

Yes?---I think he was initially happy, and then disappointed and surprised that he was getting a call from someone to say we didn’t know what the letter was. And, if I may say, equally at Suncorp we were surprised we had received notification from Mr Low that we had made an offer on this basis and he had received a letter from – essentially from me. This is a letter that issues from a system. I authorise my signature to be applied to the letter, but it was not a letter that any one person had seen go out.

But why was it not a letter that you could find on your systems then? So that when Mr Low said to Ms Calcott, “I’ve got this letter that I think is responsive to my offer”, why couldn’t someone find this letter on the system, because the evidence of Mr Low was that Ms Calcott expressed some disbelief - - -?---Yes.

- - - about his receipt of this letter?---Yes. Initially, we didn’t think it was a repayment change letter. It was described as a letter of offer. So we went looking where the letters of offer are stored. The team also approached me or my office and asked whether we had issued a letter specifically. No one thought of it as being this particular letter. We asked Mr Low to send the letter through. These letters are sent out through a process. We store a record – this letter has a particular title, if you like. We store a record that – on a particular loan account that this letter has issued, so we know that it has gone out, but we don’t store copies of the letter per se, because it’s a – for want of a better description, it’s a form letter.

I want to put to you that around – by this time, Mr Low is not getting much of the benefit of the doubt from Suncorp in his dealings with them. Do you accept that?---Yes.

And why did that happen?---I don’t – I don’t know. Again, I – I see when I look through the file and I talk to the people who are still here – not everyone is here still – but I see – I see good intent, but I see the impact of the communication being negative on Mr Low.

Well, I want to come back to that good intent, Mr Carter. I want to show you SUN.0603.0006.0158. Now, this is a record of an online conversation between Mr Ian Goldspring, who we have seen before, and the customer relations banker on 13 July 2017?---Yes.

5

Is that right?---Yes.

And what position did Mr Goldspring hold at this time?---He's a – a – I am trying to think of his title – he works in our product team.

10

And the customer relations banker tells Mr Goldspring in this online conversation that she is on a call to FOS about Jennifer Low?---Yes.

Now, Mr Goldspring says to the customer relations banker:

15

*Yes. I need to discuss with you, please. WTF is this son up to?*

?---Yes.

20 What do you say about this communication between two of your representatives about Mr Low and the situation he was facing at this time?---Yes. The language is inappropriate. And I have spoken to Mr Goldspring about it and said that.

25 It's not just the language that was inappropriate, is it, Mr Carter? The sentiment that sits behind this language was also inappropriate?---Yes, that's correct – well, sorry, I am not prepared to agree fully on that. This - - -

30 Why?---This is – this relates to something to do with the media. We have at this stage been going through a period of trying to get to offer, acceptance, offer, acceptance, we seem to be getting close, but we can't quite get there, so we're unsure of what is going on. The language used to describe it, which is quite colloquial obviously, is inappropriate.

35 So do you say that, but for the language, this was appropriate?---Work – I'm trying to understand what Mr Low was doing, I think was important and appropriate. I think the language is inappropriate.

40 All right. Was any disciplinary action taken in relation to Mr Goldspring for this communication?---I haven't seen it at the time. In preparing for this I have spoken to Mr Goldspring and said I think it's inappropriate.

All right. I tender that document, Commissioner.

45 THE COMMISSIONER: Exhibit 3.80, online conversation Goldspring, 13 July '17, SUN.0603.0006.0158.

**EXHIBIT #3.80 ONLINE CONVERSATION GOLDSRING DATED  
13/07/2017 (SUN.0603.0006.0158)**

5 MS ORR: Could I ask that you be shown SUN.0603.0004.0432. Now, this is a series of emails between Wendy Calcott and someone by the name of – well, some are with the – – –?---Yes.

10 – – – customer relations banker, but also with Mr Dennis ..... is that right?---I can't pronounce his surname either, but I know who you mean.

Yes. Thank you. And we see there that there is a discussion about the surplus funds from the sale of the family home and the customer relations banker explains that those surplus sale proceeds are sitting in the maladministration loan. They've gone to business loan B?---Yes.

To which Wendy Calcott says:

20 *Why didn't we give it to them? Have we told them it is there and available for them to draw on?*

?---Yes.

25 And no one had, had they?---No.

Because, unlike Wendy Calcott, they didn't think that Mr Low and his mother were entitled to the surplus funds, did they?---So this is in between – again, a period of offer and acceptance, the last offer we had provided was that the Lows had asked for the surplus funds. We had asked for agreement to the term as a condition of – of the return of the funds. We had not achieved an acceptance, but we did not want to delay the settlement of the Healesville property. We wanted to be able to pay out the interest bearing loans and we wanted to make sure there were no costs incurred by Mrs Low by missing settlement. So we had deposited the funds, as you can see there in one of the boxes, we put it in as an advanced payment. The intention was there to make it available, but we were waiting to get acceptance.

I see. I tender that email chain, Commissioner.

40 THE COMMISSIONER: Emails Calcott and others, 28 July '17, SUN.0603.0004.0432 exhibit 3.81.

**EXHIBIT #3.81 EMAILS CALCOTT AND OTHERS DATED 28/07/2017  
(SUN.0603.0004.0432)**

45

MS ORR: Can I ask you be shown SUN.0603.0006.0539. There is another email chain from around the same time. This one is from early August 2017. I think it will come up shortly, Mr Carter. Now, if we could turn to 0540. I see that perhaps the name of the person who is the subject of a non-publication direction has not been redacted from this document, Commissioner. Perhaps we can try and address that?---I'm happy if you just want to read it. I think I am familiar with this email.

Yes?---Yes.

10 You saw enough, do you think - - -?---I think I am – I think I – if I need help I will ask.

Can I read - - -?---Yes, please.

15 - - - and if that doesn't work, and if - - -?---Yes.

- - - you need the assistance of the document, we will deal with that then. It was an email chain that followed Mr Low's communication with Ms Calcott about the receipt of the letter - - -?---The letter, yes.

20 - - - from you. And the customer relations banker tells a group of people within Suncorp that Mr Low says he has received that letter?---Yes.

And she seeks clarification about whether anyone issued the letter?---Yes.

25 And if so, why, given that it wasn't in line with the current approved offer?---Yes.

So internally at that time, no one seems to know where this letter has come from?---Correct.

30 As you've explained?---Yes.

And then there's an email in that chain from Ian Goldspring to you the following day and he says:

35 *Do you remember this matter?*

To which you say:

40 *No, I don't know what happened here. Keen to find out.*

?---Yes.

Do you recall that?---Yes, that's right.

45 Yes. And at the bottom of one of the pages we see that someone called Amanda Adams, who I assume might be connected with your office?---That's right.

Is that right?---Yes.

Asks whether Mr Low has provided a copy of that letter?---Yes.

5 And Mr Goldspring – here we go – Mr Goldspring says – it’s still there, I am told.  
Let’s just try and do this without the document, please?---I am happy for you to do it  
without the document.

Yes?---That’s fine.

10

Ian Goldspring says:

*This is sounding a little strange to me.*

15 Do you recall reading that?---I know there’s an email from Ian at the top. Is that the  
one you mean?

Yes?---Yes.

20 So there’s the exchange with you. You say:

*I don’t know what happened here. Keen to find out.*

?---Yes. Picks it up, yes.

25

Amanda Adams then comes in - - -?---Yes.

- - - and asks whether he has provided a letter. Ian Goldspring, who has been a  
recipient of all of those emails then comes in and says:

30

*This is sounding a little strange to me.*

?---Yes.

35 And really, what I want to put to you is the Suncorp employees were very sceptical  
about what Mr Low told Ms Calcott. Very disbelieving about his assertion about  
receiving this letter?---Yes. I – because we couldn’t establish what it was. I think –  
and I may have my dates wrong, but I think we had asked Mr Low for a copy of the  
letter. I don’t think he wanted to send it in or had sent it in. I am not sure.

40

That’s exactly right, because Wendy Calcott goes on to say:

*He has not provided a copy, but was very certain of the details.*

45 ?---Yes so we’re still – as I said earlier, we are looking for a letter of offer. Which as  
you highlighted before, typically very legally oriented letter, so they’re easy to spot.  
And we had no idea at that time that it was a letter regarding a repayment change.

I understand that?---So there was no record of it.

I understand that. What I want to ask you about is particularly the attitude of Mr Goldspring as revealed in this email chain first by saying:

5

*This is sounding a little strange to me.*

And after Mr Calcott says:

10

*He has not provided a copy, but was very certain of the details.*

Mr Goldspring says:

15

*This sounds like he is up to something.*

?---Yes.

He wasn't up to something, was he, Mr Carter? He had received the letter?---As it turns out, he had received the letter, yes.

20

It was an error on the part of the bank to communicate with him in that way at that point of the discussions about the repayment of the loans?---I accept that.

Wasn't it?---Yes.

25

And Suncorp's suspicions of Mr Low were misplaced, weren't they?---Yes.

Now, the effect of that letter you have heard Mr Low's evidence about, it misled them, didn't it?---I understand that, yes.

30

It got their hopes up that Suncorp had agreed to a repayment plan that would allow them to repay on an - - -?---Yes.

- - - acceptable ongoing rate?---Yes.

35

That's right?---Yes.

Okay. Now, I do want to tender that email chain.

40

THE COMMISSIONER: Email chain Goldspring, Calcott and others, August '17, SUN.0603.0006.0539, exhibit 3.82.

45

**EXHIBIT #3.82 EMAIL CHAIN GOLDSRING, CALCOTT AND OTHERS  
DATED AUGUST 2017 (SUN.0603.0006.0539)**

MS ORR: And can I take you, Mr Carter, to an exhibit to your statement, exhibit 40, which is a letter from Ms Calcott to Mrs Low on 22 August 2017. Yes, we have that letter of 22 August. What I want to direct your attention to in this letter is the third paragraph down. So Mrs Low is being told by Ms Calcott in this letter:

5

*As the FOS determination concluded that Suncorp should not have approved the credit to Mr and Mrs Low, this meant the loan contract was void ab initio.*

10 Do you understand what that means, Mr Carter?---I believe it means that neither party should benefit from the loan.

Neither party should benefit from the loan?---Yes. That's my understanding, but I apologise if it's not quite there.

15 And do you know what Ms Calcott's understanding of that term was when she wrote this letter?---I haven't spoken to her about it, but I – I would assume she knows, given this is the area she works in.

20 And was there anything in the FOS determination that indicated that the effect of the determination was to render the loan contract void ab initio?---I – I don't – I don't know. That's my honest answer.

And we see – in the final paragraph before option 1 here:

25 *Notwithstanding the above, in the spirit of resolving the matter, Suncorp is willing to extend the following final options to Mrs Low.*

So this is the two option letter?---Yes.

30 The five year or the two year repayment:

*Please take note Suncorp is not prepared to entertain any amendments to these options.*

35 ?---That's what it says, yes.

40 Was that a reasonable approach, Mr Carter?---I think at this point we're five or so months since the determination – six months since the determination issued, where the parties were asked within 30 days to try and come up with an arrangement that they could agree on. We had been back and forth a few times, and I think the – again – and I accept that there is a different view here, but having regard to practice, having regard to the views of FOS and others, that five years interest free and repayment free, this is well above what would be considered reasonable, accepting your previous points.

45

Yes, I understand. All right. And in this same month in August 2017, FOS set up a conciliation conference in relation to the - - ?---Yes.

- - - second FOS complaint. And Suncorp spoke to FOS about its position in the lead-up to that conciliation conference?---Yes, I believe so.

5 And the customer relations banker participated in the conciliation conference?---I established that just this week, yes.

Yes. And why did that happen?---When I inquired, it's because that person had the knowledge of the matter. I wasn't aware of that until this week.

10 You gave evidence before – and I am struggling to find my note of it – about exactly what had happened with the customer relations officer. She hadn't been taken off the file entirely?---Correct.

15 You said something to the effect of she had been taken off the interaction with Mr Low?---Yes.

Is that correct?---Yes.

20 Taken away from day-to-day interaction with Mr Low - - -?---Yes.

- - - was your evidence. So why did Suncorp permit her to participate in the conciliation conference with Mr Low?---I don't know.

25 Was that the right decision?---I don't believe so.

And so your position is that she should not have participated in the conciliation conference?---Yes.

30 And you heard the evidence that was given by Mr Low about part of her contribution in the conciliation conference: she told Mr Low in that conciliation conference that if he proceeded to determination with his FOS complaint, Suncorp would take this offer from the 22 August letter off the table?---Yes, I heard that.

35 And that was what happened?---I – I believe so. I wasn't there, sorry.

40 And was that the right thing to do?---I don't know the context other than what was said. I'm not disagreeing it was said. I assume the context was the determination would be the determination, and – and therefore it might be different. It may not permit this offer. I don't know, because I wasn't there.

45 But it was an attempt to never get to the determination stage, wasn't it, because - - -?---Well, this is a conciliation conference, the purpose of which is to try and avoid getting to the determination stage, yes.

45 You heard the evidence of Mr Low about how he reacted to that, that he found that - - -?---Yes.

- - - to be a threat?---I understand, yes.

And what do you say to that?---Again, I think it's – the impact of – on our communication style is not good.

5

Do you think that was a fair way to approach the conciliation conference?---Again, I – I just don't know the context of – of – of it, or the assumption behind it being put to Mr Low that way. I can assume it was because the offer would come to an end with the determination, but I don't know.

10

There was no contractual basis, was there, Mr Carter, for Suncorp to insist on early repayment of the loan?---I must apologise, I – I don't know what happens once we get to that place with FOS where they issue the determination and with the language that is used.

15

Are you familiar with the standard loan contracts that Suncorp uses?---Yes.

Are there any terms in there that would permit such - - -?---I am not familiar with that level of detail in the contracts, sorry.

20

Okay. You can't point to anything that permits that?---No. And I can't tell you if there is something or there isn't.

All right. Now, can I take you to, I think, one final document, Mr Carter, which is Suncorp's submission to the Commissioner on 29 January this year. Have you seen that document?---Yes, I have.

25

- - - before. That's RCD.0001.0040.0002. So you said you're familiar with this document - - -?---I think, as you know, I signed it.

30

Yes, I do know that?---Yes.

Thank you, Mr Carter. 0013 is the first page I just ask you to have a look at. So you know that this was prepared in response to a letter from the Commissioner asking Suncorp to articulate any events of misconduct or conduct falling below community standards and expectations over the last so years?---Yes.

35

All right. And in response to that request, one of the things that Suncorp pointed out at 0013 at 1.14 down the bottom of the page was that:

40

*Following a FOS investigation completed in mid-2012 and an internal review of hardship files by SML –*

Now, SML is the banking - - -?---Yes.

45

Banking part of the business?---Yes.

Continuing:

*It was determined that Suncorp had misapplied its Hardship Requests Policy in a number of instances.*

5

?---Yes.

We see that. And later in that paragraph you explain – you provide a bit of detail about those failings?---Yes.

10

Now, we see that those failings related to things such as parties to joint loans?---Yes.

Customers having their requests for hardship assistance declined due to the non-return of statement of position forms?---Yes.

15

And Suncorp refusing to consider requests for hardship assistance in relation to line of credit types of facilities?---Yes.

20

So these were all things that Suncorp discovered about its approach to hardship requests as a result of firstly a FOS investigation into this, and your own internal review of your hardship files?---Yes, that's correct.

Have changes been made to deal with these problems since they were discovered?---Yes, there has.

25

And what are the nature of those changes, Mr Carter?---The most significant changes occurred through the – progressively, but the most significant changes have actually occurred in the last 12 months. So this area of financial distress, as I said earlier, is a very challenging area. People don't expect to find themselves in this situation, and our staff who deal with it find it challenging as well, and it takes a toll on both parties. We found that we – we responded to this issue, but over time we thought there was a better way of doing it, and last year we looked at best practice, identified best practice, worked with some external consumer advocate groups, identified Kildonan Uniting Care as the leaders in this field, we brought them in and they recommended a number of changes which we started implementing towards the end of 2017, have been progressively implementing since and the result of that in the last however long, six, eight months has been a significant reduction in complaints relating to hardship, and a reduction in cases at FOS relating to hardship.

30

35

40

This was a problem for you before these changes were made, wasn't it?---In 2012?

Yes. And post-2012 you continued to receive complaints about the handling of hardship requests?---Yes, we have. Yes. And so we – we've tried different things to – to get a better outcome for customers, and – and I – as I said, last year we identified we needed to do something again to try and make a material impact. Unfortunately, hardship requests are typically twofold. There are people in genuine hardship, and we need to get those absolutely right. From time to time people request hardship

45

5 who are not in genuine hardship, and sometimes those people when they are declined will complain. So we accept, and I accept, there might be complaints for that but there should not be any complaints for people who have genuine difficulties, and that is our focus in trying to make significant change as we have done over the last, I don't know, eight, nine months now.

10 So what – can you just summarise the key change or changes that you've made?---Yes. There – there's a number of things. So coaching for our staff around how they engage with customers experiencing financial distress, recognising that this is probably the first time a customer has experienced this situation. Focusing less on the policy requirements for provision of information, taking information over the phone rather than holding it in writing – I know that doesn't sound like much but that has a big impact on the way the customer experiences the process.

15 So those are the changes that you've made?---They are examples of them. I don't have an exhaustive list with me, having not prepared for that.

20 Okay. Now, can I just direct you to one other issue in this document that was provided to the Commissioner - - -?---Yes.

25 - - - which relates to a different part of the business. If we turn to 2.8 in the document which is at page 0018. We see under the heading Dispute Resolution Issue that in February last year FOS notified Suncorp's life insurance business – have I got that right?---Yes, that's correct.

That there was a systemic issue in relation to delayed resolution of internal dispute resolution processes, responses to FOS, and compliance with FOS determinations?---Yes, that's correct.

30 So that's an issue that's arisen in another part of the business, but a significant issue, is it not, particularly as it covers compliance with FOS determinations?---I don't – I am not involved in the day-to-day management of that part of the business, but I – if it's in this, it is obviously one we thought met the criteria for relevant conduct for the purpose of the Commission. So it must be material.

35 And do you think there are issues in your world, in the banking part of Suncorp, with your responses to FOS determinations and your compliance with FOS determinations?---No, I don't.

40 Do you think that the way Suncorp engaged with the Lows following the Suncorp – I'm sorry, following the FOS determination was reasonable and fair?---Again, I say I think from my review of the information, the intention behind what we did was fair. I absolutely accept the impact we have had has been less than desirable, so we need to work out how to do that differently going forward.

45

There were times in your negotiations with the Lows where there was a threat to commence charging interest at some point in the process. Have you seen that in the documents?---I'm sorry, I can't immediately recall it.

5 Okay. Well, for the purposes of this - - -?---I accept – I accept what you're saying.

Now, FOS had told you that you are not permitted to charge interest because this loan had been irresponsibly lent. Do you think it was appropriate that in that negotiation process part of the negotiations involved a threat to introduce interest?---I understand – I understand your point of view on this. I hope I've been able to articulate my understanding of the way we do things as an industry, and as FOS and CALC and others would see as acceptable, which is at some point the interest free period comes to an end.

15 Yes?---And there is a new arrangement created.

Is this connected with your idea that the loan ceases to exist and you can enter into new terms - - -?---Correct.

20 - - - as you see fit?---Not as we see fit, but by agreement.

By agreement. So why would an applicant ever agree to pay interest again when FOS had told them that you didn't have an entitlement to charge interest?---Again, I am – you know, we're going - - -

25 It comes back to the same point?---It will come back to the same point, yes.

Yes, I see. All right. You're aware, aren't you, that by being a subscriber to the Code of Banking Practice Suncorp promises to its customers that it will act fairly and reasonably towards them in a consistent and ethical manner?---Yes.

30 And in doing so they will consider their conduct, the conduct of the customer and the contract between them?---Yes.

35 Do you think that Suncorp's conduct through the life of these dealings with Mr Low and his mother demonstrates that you acted fairly and reasonably towards them in a consistent and ethical manner?---I think there has been lapses there and I see again with the impact – it wouldn't matter if I thought we had: the impact on the customer has not been acceptable.

40 It matters to me, Mr Carter?---All right. Well, I think there have been lapses there.

Yes. And in those lapses you did not comply with that obligation under the Banking Code of Practice; is that right?---That would be correct.

45 All right. Thank you. I have no further questions for Mr Carter.

THE COMMISSIONER: Mr Carter, we've been around the tree several times. Can I just go around it one more time, but with a slightly different approach to it. Can we do it in steps?---Sure.

5 The FOS determination was the bank should not have made the loan. Step 1?---Yes.

Are we agreed so far?---Yes.

10 I've done well. Step 2, FOS determines that the borrower should be refunded the borrower's outlays for – I think it's only interest or interest and charges - - -?---Yes.

- - - that have been accrued in the interim - - -?---Since inception.

15 - - - period and should not be charged interest into the future. Step 2?---Well, since inception, plus the accrual since the complaint commenced. So yes.

Step 2, so far so good. Step 3 – and it's step 3 that I draw particular attention to – it is that regardless of the way the funds advanced may have been applied by the borrower - - -?---Yes.

20

- - - the borrower, you would say, must either agree within a period of six to 12 months to repay the whole of the principal to the bank?---Or enter into other arrangements for it, yes.

25 Or – or - - -?---Yes.

- - - renegotiate a new commercial arrangement?---Yes.

30 If it pays – if the borrower pays the whole of the principal back to the bank in six or 12 months, the bank is back in the position it would have been had the loan not been made?---Yes.

But for the time - - -?---Yes.

35 - - - value which the interest - - -?---Yes.

- - - etcetera, which we have already noted is not to be charged and needs to be repaid?---I agree.

40 Is the difficulty in that those choices of repay the whole, or renegotiate a new and commercial arrangement to be made regardless of the way the funds may – advanced may have been applied in the interim?---I was with you all the way until that last little bit. Sorry.

45 I thought that's where the break was, and I just - - -?---Not that I don't agree, I just don't quite understand, sorry.

Well, take a business loan?---Yes.

Shouldn't be made - - -?---Yes.

5 - - - for any of a number of reasons. The business owner takes the funds advanced, pours the funds advanced into working capital for a business that the bank should have recognised was failing?---Yes.

10 And so pours the money out the door in pursuit of a bad business venture?---Yes.

And the borrower, therefore, has disbursed the funds, disbursed them not by investing on hayburner on the 3<sup>rd</sup> at Flemington, but applying them in the business. The position you say that follows is that the borrower then must either pay the whole of the amount back or renegotiate a new commercial arrangement to pay the whole back; is that right?---Yes, I believe so.

20 And if there's unfairness – that's the \$64,000 question – if there's unfairness, I wonder whether it is in that step of regardless of the way the funds advanced have been applied. But the bank is kept whole, it gets its money back, but the borrower who has been advanced moneys the bank should not have advanced still has to repay?---May I offer - - -

Yes, please?--- - - - a view?

25 That's why I wanted to put it to you, so you could give an answer?---I think this is one where there's not one specific – one way of doing it, and I think there is a continuum here. I think with a bank – a lender has been grossly negligent, the borrower had honest intent as to purpose, the borrower had honest intent as to the financial data they provided, they thought it was a good business, it actually wasn't a  
30 good business, the lender should have known that, that is – that is a far more negligent outcome. And, therefore, I think there should be a greater onus or penalty on the bank or the lender. Then we start moving up. We then have a system – if I may be – I don't mean to sound flippant, but where we have a situation where accepting that the bank should have inquired further, but was supported in its loss, if  
35 I may use those – that language – by – by misdeeds, the misleading or deceptive conduct by the borrower, either as to purpose or the provision of false financial information, so the bank was tricked almost into advancing the loan, then there's a shared responsibility there, and there needs to be some sort of sharing and much – I think the language is “contributory negligence” but in a similar fashion it probably  
40 needs to be some sort of sharing of the negative outcome. I think – I would like to believe all of our customers coming to us are honest, honest in intent, honest with their information. If we turn that around and start from a premise that all of our customers are dishonest, that's going to be a very – you know, it's going to make what is currently not a good relationship between banks and the community worse.  
45 So I guess that's the tension in the lending. I think for retail consumer loans, it has very clearly got to be protective of the borrower. Clearly, when we get to corporate loans, the corporates are at least as sophisticated as the lenders and it's an equal foot

race. But small business is somewhere in the middle here and it's a question of which way you go from the middle as to how – how to resolve this question.

5 Yes. Ms Orr, is there anything arising out of that? Ms Mitchelmore.

MS MITCHELMORE: Commissioner, I have no questions for Mr Carter.

10 THE COMMISSIONER: Thank you. Thank you, Mr Carter, thank you for your evidence. You're excused from further attendance. Thank you.

**<THE WITNESS WITHDREW**

**[3.53 pm]**

15 MS ORR: Commissioner, we have one final witness in this case study. I will not be able to finish his evidence today. I wonder if it is better, rather than have him under cross-examination over the weekend, if we finish slightly earlier and commence his evidence on Monday morning.

20 THE COMMISSIONER: I will weep tears of blood if we finish early, Ms Orr, but I will put up with that. How are we travelling generally for time?

MS ORR: I think we're fine, Commissioner. That's the best assessment I make as  
---

25 THE COMMISSIONER: Counsel was then heard to assure the Commission that the timetable was perfectly running according to time. Is that what I should take from it, Ms Orr?

30 MS ORR: Certainly not. I said nothing of the kind, Commissioner.

THE COMMISSIONER: 9.45 on Monday.

MS ORR: Yes. Thank you, Commissioner.

35

**MATTER ADJOURNED at 3.53 pm UNTIL MONDAY, 28 MAY 2018**

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