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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-909728

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

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

**BRISBANE**

**9.53 AM, TUESDAY, 26 JUNE 2018**

**Continued from 25.6.18**

**DAY 31**

**MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M.  
HOSKING and MS S. ZELEZNIKOW  
DR M. COLLINS QC appears for ANZ**

**<BENJAMIN WILLIAM STEINBERG, ON FORMER AFFIRMATION**

**[9.52 am]**

**<CROSS-EXAMINATION BY MS ORR**

5

THE COMMISSIONER: I'm sorry we have started late, but the technology gremlins have apparently done their thing again. That which was tested this morning then proved it wanted to have a little holiday. So there we are. Yes, Ms Orr.

10

MS ORR: Thank you, Commissioner.

Now, Mr Steinberg, I want to pick up where I left off yesterday. We were dealing with ANZ - - -

15

MR .....: Can't hear.

MS ORR: We were dealing with - - -

20

THE COMMISSIONER: Well, I won't have interruptions like that. I just won't have it. Go on, Ms Orr.

MS ORR: We were dealing with ANZs provisioning for the Landmark loan book. Now, is it fair to say that the quality of the loans that comprised the Landmark loan book was worse than ANZ had anticipated?---Yes.

25

And in your statement you have provided a table that sets out the number and value of the former Landmark accounts that were impaired and high risk?---In my Rubric 4 - - -

30

Yes, your original statement?---Yes.

Yes?---I do, yes.

35

If we go to that – that's at paragraph 35 of your first statement. I will just get the document ID for that. It's ANZ.999.010.0069. That's the statement. And the table appears - - -?---Well, mine is 79, Ms Orr. Is that paragraph 35?

40

Yes. I'm sorry. I was directing you first to the first page of the statement - - -?---Yes.

- - - which you now have on the screen. And then the table that I want you to look at is at 0079 to 0080. Now - - -?---So I've got a table that goes from 78 to 79.

45

Thank you?---Yes.

Now, you've described in your statement, Mr Steinberg, what an impaired loan is in paragraph 35(a) of your statement, one that:

*Has been assessed as having a rating of eight –*

5

Is that eight minus. Is that how I read that?---Yes, it is.

Eight minus 9 or 10?---Yes.

10 And you've also described what a high risk account is, in paragraph 35(b), with an internal risk rate of 7 plus D or worse?---Yes.

Now, if we turn back to the table that you've provided, which is in paragraph 34 – we will need 79 and 78 on the screen at once, please – we see that in March 2010  
15 there were 113 impaired Landmark accounts?---Yes.

And there were 320 high risk accounts?---Yes.

For a total of 433?---That's right.  
20

And your table doesn't include figures for 2011 or 2012. Why is that, Mr Steinberg?---Because that data was not available to us.

It's still not available to you?---That's right. Yes.  
25

And then in 2013 we can see that you're up from 113 impaired accounts to 419 impaired accounts. Is that right?---Yes.

And you're up from 320 high risk accounts to 631 high risk accounts?---From 320 to  
30 631? Is that what you said?

That's right?---Yes, that's right.

So, in 2013, you've got a total of 1050 impaired and high risk Landmark  
35 accounts?---That's right.

And they had a total value, those accounts, of \$722 million?---That's right.

Which is almost a third of the value of the former Landmark loan book as it stood at  
40 that time. Is that right?---Yes.

So a significant volume of the Landmark loans by 2013 were in the impaired or high risk category?---Yes, I would agree with that.

45 And you've agreed that that was worse than ANZ expected of the loan book. Is that right?---Yes.

Now, can I take you to a document that's not in your witness statement, which is ANZ.800.075.5114?---Is this one of -- do I have the document here?

5 I think you may have the document there, Mr Steinberg. I understand your counsel have provided you with a folder of some documents that we put them on notice of?---Is that the tender bundle?

10 Yes. I don't know how that folder is organised, Mr Steinberg. So I won't be able to assist you to find the document within the folder - - -?---Okay.

- - - other than to tell you the document ID is ANZ.800.075.5114?---Yes.

Now, this is minutes of an ANZ board meeting on 6 August 2015?---Yes.

15 And on that date, ANZs board considered some of the issues that were arising by that time from its acquisition of the Landmark loan book?---I don't know, but if you can take me to the area where it considers that.

20 You've seen this document before, though, Mr Steinberg? Your lawyers have provided it with you in preparation for the hearings today?---Yes. I saw it over the course of the weekend, but I haven't looked at the document in detail.

Let me take you to the part - - -?---Yes.

25 - - - that I am concerned with, which is 5124. And what we see there is that at this meeting of the ANZ board on 6 August 2015, the minutes record that the board discussed a paper titled Farming Segment Supports Strategy and heard comments from Mrs Whelan, Williams, Bezencon and Linden, who highlighted a number of points. And I want to direct your attention to the second point they highlighted  
30 which is:

*There is a lesson to be learnt from the Landmark acquisition in connection with assumptions that were made around delinquencies and expected losses that were not stress tested.*

35 You see that, Mr Steinberg?---Yes, I do.

Now, do you know what the assumptions are that are referred to there?---No, I don't.

40 You don't know what assumptions ANZ made in connection with the Landmark acquisition?---No, I don't.

45 ANZ has put you forward to give evidence about the Landmark acquisition, Mr Steinberg. Are you telling the Commission you are unable to tell us what assumptions ANZ made in connection with the Landmark acquisition?---Yes, that's what I'm saying.

THE COMMISSIONER: Well, Dr Collins, your side chose this witness. What am I to do?

5 DR COLLINS: The question, with respect, Commissioner, began from the premise of the second bullet point on the page on the screen.

THE COMMISSIONER: Yes, I understand that.

10 DR COLLINS: The question was then put on a much broader basis. It might be that if the question were clarified to the witness – the first formulation concerned assumptions made around delinquencies. That’s one matter. The second formulation concerned assumptions around the acquisition, which is quite a different matter. I would respectfully request that, if that’s the – if that’s the matter which Counsel Assisting wishes to inquire into, the question ought be re-put.

15

MS ORR: Well, I rather thought the answer to my question meant that even the subset of the assumptions that were identified in this document was not a topic that he was able to give evidence on. I’m happy to put the question in relation to the subset and - - -

20

THE COMMISSIONER: Put it again and see what answer he gives.

MS ORR: - - - see if I can get a different answer.

25 Are you unable to say, Mr Steinberg, what assumptions ANZ made in relation to delinquencies in connection with the Landmark acquisition?---What – what I am able to talk to is the level of provisioning, which I’m assuming that that’s what they mean by delinquencies, the level of provisioning that was allowed for when the loan book was assessed and when the completion accounts were done as at 1 March, which then became part of the adjustment at the acquisition.

30

So do you interpret this to be referable to assumptions that were made in connection with the provisioning?---That’s how I’m reading it, yes.

35 And, in that case, what do you understand the lesson to be learnt from the assumptions that ANZ made in connection with provisioning to be?---So, Ms Orr, I wasn’t at this meeting, and there has been no description of this particular matter having – having been discussed at the meeting given to me. So I’m trying to read into it what it might mean.

40

You’ve made no inquiries of the people who were present at this meeting, having been provided with this document in preparation for your evidence?---No.

45 All right. Well, Mr Steinberg, what does it mean to stress test losses?---I assume the meaning of that is to do some tests to try and determine what the – what the losses might be under different scenarios.

Yes. And do you see here that there is a lesson to be learnt, according to the people who address this meeting, in connection with expected losses that were not stress tested?---Yes. I mean, what I'm interpreting from that is that the losses were ultimately higher than what we expected them to be, and, therefore, at the time when we did the due diligence which resulted in us calculating what the provision should be, that we hadn't done that work certainly correctly, in the sense of the way it turned out.

Well, did ANZ stress test the expected losses?---I haven't seen any stress testing. What I've seen is the due diligence work that was done and then the completion accounts, which outlined the – the final adjustment for – for provisioning.

So you've seen no suggestion that there was stress testing of the expected losses?---No, I don't recall seeing anything like that.

So from that, given that you are the person here giving evidence about these topics, do we understand the situation to be, then, that there was no stress testing of the expected losses?---I think the best that I can say is that I'm not aware of there being any stress testing.

And you would be aware, if there was, wouldn't you, Mr Steinberg, because you prepared to give evidence about these topics to the Commission?---Yes, I did. But I'm – the work that I did was generally in response to the questions that we received, and so as I worked through those questions, that particular issue did not come up. And so I haven't inquired or asked for information specifically on stress testing.

You were asked a series of questions about ANZs conduct in connection with the acquisition of Landmark, weren't you?---Yes, that's right.

And you address that in your first statement?---Yes, that's right.

But you did not inform yourself about these particular matters. Is that your evidence?---I – I did not inform myself about stress testing, yes.

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

THE COMMISSIONER: Exhibit 4.12, minutes of ANZ board, 6 August 2015, ANZ.800.075.5114.

**EXHIBIT #4.12 MINUTES OF ANZ BOARD DATED 06/08/2015  
(ANZ.800.075.5114)**

MS ORR: Now, Mr Steinberg, in the years that followed the acquisition ANZ received complaints about its handling of the accounts of former Landmark customers. Is that right?---Yes.

And in your statement you categorise those complaints. You explain that they related to a lack of communication from ANZ about the transition from Landmark to ANZ?---That's right.

5 They also involved complaints about issues associated with the transition, including an inability by people to access and manage their accounts?---Yes.

And they included complaints about changes in the frequency of interest payments when customers' loans were re-documented?---Yes.

10

And complaints about other changes in facility terms?---Yes.

Complaints about default notices being issued by ANZ?---Yes.

15 And there were allegations that ANZ had required customers to sell their properties in circumstances that resulted in a sale at under-value?---Yes, that's right.

And some former Landmark customers took their stories to the media?---That's right, yes.

20

And two of those were Charlie Phillott Senior and Junior who ran Carisbrooke Station near Winton in north central Queensland?---Yes, that's right.

25 And when did stories about Mr Phillott's treatment by ANZ first start appearing in the media?---So my understanding is December 2014, where there was some radio media coverage, and then again – it was around June 2015 when there was some television coverage on 60 Minutes.

30 Thank you. So the first publicity in connection with Mr Phillott's story was December 2014?---Yes.

And you've acknowledged in your first statement that ANZs conduct in relation to Mr Phillott Junior fell below community standards and expectations?---Yes.

35 And you've also acknowledged that ANZs conduct in relation to Mr Phillott Junior was in breach of certain clauses of the Code of Banking Practice?---Yes.

40 Can I just ask you to look at the Code of Banking Practice while I ask you these questions, which is RCD.9999.0035.0001. Are you familiar with the Code of Banking Practice as it was in place at this time, Mr Steinberg?---I am familiar with the Code of Banking Practice. I can't recall off the top of my head what was in place at this particular time, but I am familiar with it.

45 This is the Code of Banking Practice published in May 2004, which we understand to be the version that was in place at the relevant time and the version that you've referred to, I think, in your statement?---Yes.

Could I ask you to turn to 0006 of that document?---So is this in 41 again?

No. I'm sorry. I don't think you will have that document. This is not an ANZ document. This is a Commission document. So you will need to look on the screen.  
5 And we see there clause 2.2 of the Code of Banking Practice obliged ANZ to:

*...act fairly and reasonably towards customers in a consistent and ethical manner. In doing so, we will consider your conduct, our conduct and the contract between us.*

10 Now, you've conceded that ANZs conduct in relation to Mr Phillott Junior breached that obligation. That's right?---Ms Orr, can I have a look at my table 8, please, in my statement?

15 Yes. Yes. Of course, Mr Steinberg?---Thank you.

If we could bring it up on the screen, as well, that might assist. It's ANZ.999.010.0087. Now, there has been some redactions made to that page. But we understand that Mr Phillott is comfortable with us referring to his identity. There  
20 has been contact with the Commission. So you can see in your version, Mr Steinberg, the part of this table that relates to Mr Phillott Junior?---Yes, I can.

It's the second row in the table on this page?---Yes.

25 And you can see there that you've acknowledged breaches of clause 2.2 and 25.2 of the Code of Banking Practice in relation to Mr Phillott junior?---Yes, that's right.

So you now can answer my question about having conceded that there was a breach by ANZ - - -?---Yes.

30 - - - of clause 2.2 which I just directed you to?---Yes.

And, in general terms, can you explain what it was about ANZs conduct towards Mr Phillott Junior that breached the obligation in clause 2.2?---Well, there were – there  
35 were two aspects, as I understand it. The first aspect was in that ANZ took responsibility for some of the dealings that Landmark had with Mr Phillott in relation to the original lending to – to the customer. And then the second aspect was, post-ANZs acquisition, the manner in which we communicated with Mr Phillott and the fact that we felt we did not work constructively with him in a way to resolve the  
40 issues with him.

Those are the ways in which you say ANZ breached clause 2.2 in relation to Mr Phillott Junior?---Yes.

45 Right. You've also - - -

THE COMMISSIONER: Well, could I understand that. You say you did not act constructively. Are you saying you did not act fairly and reasonably? Are you saying the bank did not act fairly and reasonably?---Yes, I think that's correct.

5 Are you saying that the bank did not act in a consistent and ethical manner?---Commissioner, I – I think that the bank did act in a consistent manner in terms of its dealings there. There was a history of requesting debt repayment over a period of time. I think the dealings were consistent, but I think they weren't fair and they weren't reasonable.

10 And the fourth element to which you have not referred is ethical. Did the bank act in an ethical manner?---I think it's – it's fair to say we didn't.

Go on.

15 MS ORR: You've made another concession in relation to Mr Phillott Junior, which is that ANZ breached clause 25.2 of the banking Code of Practice. Clause 25.2 is at 0014 of this document. I'm sorry. If it assists, the full number is RCD.9999.0035.0014. Do you see there that the obligation imposed on ANZ by  
20 clause 25.2 reads as follows:

*With your agreement, we will try to help you overcome your financial difficulties with any credit facility you have with us. We could, for example, work with you to develop a repayment plan. If at the time the hardship variations provisions of the Uniform Consumer Credit Code could apply to  
25 your circumstances, we will inform you about them.*

Now, again, could you explain, Mr Steinberg, what it was about ANZs conduct towards Mr Phillott Junior that breached that obligation?---Yes. My understanding is  
30 that we issued a notice on – on our customer, effectively, terminating the facilities and requesting repayment of them. And I believe that's the – the conduct that did not comply with that section of the Code.

35 In that that conduct did not constitute ANZ trying to help Mr Phillott overcome his financial difficulties with his credit facility with ANZ?---At that time, yes.

Thank you. I tender the banking Code of Practice from 2004, Commissioner.

40 THE COMMISSIONER: Exhibit 4.13, Code of Banking Practice as at 2004, RCD.9999.0035.0001.

**EXHIBIT #4.13 CODE OF BANKING PRACTICE (RCD.9999.0035.0001)**

45 MS ORR: Now, in that statement, your first statement, Mr Steinberg, you said that there were nine other cases where ANZ accepted that it engaged in conduct in

relation to a former Landmark customer that fell below community standards and expectations or was in breach of the Banking Code of Practice?---Nine others. That's right.

5 Thank you. And in a letter that ANZ sent to the Commission in May this year in response to a request for information about any misconduct or conduct falling below community standards and expectations in relation to agribusiness, ANZ also said that it had recently become aware of a claim made by a former customer arising from its conduct in transitioning facilities acquired from Landmark to ANZ. ANZ said that:

10

*Although the conduct took place in 2010, the claim was first raised with ANZ in late January 2018. ANZ has now identified what it anticipates may be breaches of the Australian Banking Association's Code of Banking Practice and is in the process of investigating the circumstances and whether loss has*

15

*been suffered as a result of its conduct.*

Are you familiar with that letter and that part of that letter, Mr Steinberg?---Yes, I am.

20 Now, has ANZ now investigated the circumstances of that customer?---We – we're certainly in the process of investigating it, but we haven't concluded our investigations at this stage.

25 Are there any preliminary conclusions or findings that ANZ has reached?---So what we've done is we've presented the – the facts of the matter to a group of senior people at the bank. We've determined that we will get some – some legal review done, and that I should – that we should then present the matter to the bank's customer fairness officer for some guidance and some adjudication, and that's where the matter currently sits at the moment.

30

At this stage, does it appear that the customer has suffered loss as a result of ANZ's conduct?---I don't think we've bottomed that out yet, Ms Orr. Our customer feels that they have, but that's something we're – we're looking into. I haven't yet reached that conclusion.

35

And does it appear at this stage that ANZ has breached the Code of Banking Practice in relation to that customer?---Again, I haven't yet reached that conclusion. I think it's possible, but I haven't yet reached that conclusion.

40 And which part of the Code of Banking Practice applies here?---It will be the obligation to act fairly and reasonably.

So ANZ is still investigating whether or not it acted fairly and reasonably towards that customer?---Yes, that's right.

45

And when do you anticipate that investigation will conclude?---Look, I don't – I don't know. It entails us arranging some meetings with various people and obtaining some more information. I don't know.

5 Are you able to give any estimate?---I can give an estimate of six weeks.

Thank you. Now - - -

10 THE COMMISSIONER: Just understand how many man-hours that entails?---Look, again, an estimate, Commissioner. I would say it's 15 to 25 man-hours.

15 Spread over that time?---And then it's a matter of getting some – some legal guidance, and then sitting down with the customer fairness adviser. So I have been conservative to make sure that I – I don't over-promise and under-deliver.

MS ORR: Has ANZ met with that customer, Mr Steinberg?---Yes, we have.

20 Thank you. All right. Now, the Commission asked ANZ to provide a statement explaining its conduct in relation to seven particular former Landmark customers?---Yes.

25 And in four of those cases, the statements that you've provided contain acknowledgements by you that ANZ engaged in conduct that fell below community standards and expectations?---Yes, without actually doing – going through each one of them, that sounds about right, yes.

There are seven - - -?---There are seven in total.

30 There are seven in total?---And I know there were some where we've made some admissions on community standards.

Yes. Well - - -?---And one on misconduct, yes.

35 I am putting to you there are four of the seven?---Yes. I will accept that.

You accept that?---Yes.

40 In one of those cases you also accept that ANZ engaged in misconduct?---Yes, that's right.

All right. And in the other three cases, you've not accepted that ANZs conduct fell below community standards and expectations?---Yes.

45 Or that there was any misconduct?---Yes.

But in each of the seven cases, you've accepted that there are things that ANZ could have done and should have done differently?---Yes.

And I want to ask you some questions about each of those cases?---Yes.

5

And the first case that I want to take you to relates to the Cheesman family?---Yes.

And their company Cheesman Family Farms Proprietary Limited. You have your statement in relation to that matter, Mr Steinberg?---Yes.

10

THE COMMISSIONER: Which statement is it, Ms Orr?

MS ORR: This is a statement responsive to Rubric 4-38.

15

THE COMMISSIONER: Thank you.

MS ORR: And the document ID for the statement – sorry – I will - - -

THE COMMISSIONER: I have got the statement. Which annexure?

20

MS ORR: It's annexure G. I'm sorry, Commissioner.

THE COMMISSIONER: Thank you.

25

MS ORR: At ANZ.999.013.0001.

THE COMMISSIONER: Thank you.

30

MS ORR: Now, Mr Steinberg, the Cheesmans ran a farm in western Victoria. Is that right?---Yes, that's right.

And that farm produced hay, cereals, oil seeds, and pulses including lentils?---Yes.

35

And the members of the Cheesman farm who were involved with the farm were Arthur and Rhonda Cheesman and their son Reuben Cheesman and his wife Katrina?---Yes, that's right.

And they were third and fourth generation farmers who had farmed in the area all their lives?---Yes.

40

And the farm was spread across a number of properties, some of which were owned by the Cheesmans and some of which were leased by them?---Yes.

45

And most of the properties that they owned are described in a table in your statement at paragraph 30, which is ANZ.999.013.0001 at 0011?---Yes, that's right.

Now, we can see from your table – which will come up on the screen – but you have a copy there?---Yes.

5 That there are three properties in the table: the Lens property, the Scottsdale, and the River property?---That's right.

And each of those properties comprised several parcels of land?---Yes.

10 And Arthur and Katrina Cheesman lived on one of the parcels of land that made up the Scottsdale property?---Yes.

And there was also a fourth property which isn't referred to in your table which was called [REDACTED]. Is that right?---That is right, yes.

15 And Reuben and Katrina, Reuben the son of Arthur and – I'm sorry – the son of Arthur and Rhonda Cheesman. My mistake. Arthur and Rhonda lived on one of the parcels that made up the Scottsdale property, and their son Reuben and his wife Katrina lived on the [REDACTED] property?---Yes.

20 Yes. Now, do the Cheesmans still own any of these properties? Do they own any of the properties in the table? Do they own Lens, Scottsdale or River?---No, not to my knowledge.

25 And do they still operate their farm on any of those properties in your table?---Look, I don't believe so, because all three of them have been sold by the Cheesmans. Yes.

And they don't live on any of the properties in the table either?---No.

30 Now, the Cheesmans were former Landmark customers?---Yes.

And you've considered ANZs conduct in relation to the Cheesmans?---Yes.

35 And, in your view, aspects of ANZs conduct fell below community standards and expectations?---Yes, that's right.

And I will come to that conduct. But, in addition to that, you acknowledge that there were other aspects of ANZs management of its relationship with the Cheesmans that could have been handled better?---Yes, that's right.

40 Okay. Now, to understand some of the decisions that ANZ made in relation to the Cheesmans, I want to go back to 2010 when ANZ acquired the Cheesmans' loans as part of the Landmark loan book?---Yes.

45 The Cheesmans had been clients of Landmark, you tell us in your statement, since 2004?---Yes, that's right.

And at the time they came across in March 2010, they had a term loan with a limit of \$2.95 million?---That's correct.

5 And they also had a seasonal facility with a limit of \$650,000?---Yes.

Now, even before ANZ acquired the Landmark loan book, the Cheesmans were facing financial difficulties, weren't they?---Yes.

10 Landmark had already been considering downgrading their risk rating?---That's right.

And when they moved across their facilities were already overdrawn?---Well, I don't quite remember that point. Can you take me to something in my statement.

15 Yes. Paragraph 41 of your statement?---Thank you. Yes, that's right, Ms Orr. Yes.

20 Thank you. Now, could I take you to one of the exhibits to your statement, which is exhibit 19. This is ANZ.160.003.0272. There are a number – I think there are multiple documents behind that tab of your statement, Mr Steinberg. And 0272 is the second document behind that tab. You should only need to turn one page and one pink page into the exhibit, Mr Steinberg. If you go back to the start. The first document is 0298. If you go back to the first document there, you will see 0298?---Yes, I do.

25 Then it looks like you have a pink page. And behind that you have the document that I'm directing you to, 0272?---Yes.

30 Okay. Now, this is a credit submission that was prepared by Landmark in May 2009 before the acquisition?---Yes.

And if we turn to the fifth page of that document, which is 0276 - - ?---Yes.

35 - - - we see a summary of the Cheesmans' financial information for the past three financial years. Now, we have redactions there, but you have a version that allows you to see that information. And you can see that in each year the farm had made a loss – each of the last three financial years?---Yes.

40 And you can see that in the 2007 and 2008 financial years the interest costs being paid by the Cheesmans were around 40 per cent of the total farm income?---Yes, close to it. Yes.

And underneath this table we see Comment on Historical Financials. Do you see that part of the document, Mr Steinberg?---Yes, I do.

45 And the comment there is:

5 *Client's interest costs are exceptionally high and are dramatically impacting the client's profitability. Interest is a reflection, however, of the client's high debt to income ratio. Given a reasonable year, the client should achieve a sound income and they now realise that they need to look more closely at their expenses. The client's accountant has been working closely with them recently and has very clearly told them the financial position they are currently facing. The clients have been made aware by both the RFM and accountant that the success of the coming season is vitally important to their ability to continue to trade.*

10

You see that?---Yes.

15 And we see, from this and other documents that you have exhibited, that part of the reason for the poor results the Cheesmans were experiencing was that the region that they were in had experienced droughts and below average rainfall?---Yes, that's right.

20 So by August 2010 – so I am taking you now about six months after ANZ had acquired this loan - - -?---Yes.

20

- - - from Landmark. So within six months, in August 2010, ANZ was already considering transferring the Cheesmans' file to lending services. Is that right?---Yes, that's right.

25 And in October 2010 ANZ increased the Cheesmans' facilities to allow them to trade for the rest of the season?---Can you just take me to that document, Ms Orr, so I can confirm that.

30 Yes, I can?---Please.

30

I can take you to the 21<sup>st</sup> exhibit to your statement. And - - -?---Is that LMG-21?

It is?---Thank you.

35 And ANZ – again, your statement has been prepared in a way that it has multiple documents behind the tabs. Can I ask you to turn to ANZ.160.003.0186?---So the first one I have in that batch is 0216.

40 0186 is - - -

40

THE COMMISSIONER: It's on the screen, I think.

45 MS ORR: - - - on the screen. If you can't find it there, it might be easier for you to look at it on the screen, Mr Steinberg?---Yes. Could we make it a little bit bigger, if possible, please.

And, just to remind you that the question that I had asked you, Mr Steinberg, was about whether in October 2010 ANZ had increased the facilities to allow trade for the rest of the season. So if you could just – I appreciate that the print is small?---Yes.

5

But it's small on the printed page, as well, I'm afraid, in the form it was provided by ANZ. But this is a document that I want to suggest to you supports the proposition I have just put to you. Can I ask you to focus on the second box under the heading Conclusions and Recommendations. You have the relevant part there. What you don't have, because it has been blown up, is the date, which also appears above that in the document, 7 October 2010?---Yes. So – yes, Ms Orr. So what I'm seeing there is the credit memorandum that's seeking approval for the increase.

10

Yes?---I just prefer to see the letter of offer in October 2010, if that's possible.

15

Yes?---Because I've got recollection - - -

And that is possible. It is ANZ.160.004.0054?---Thank you.

20

A letter of offer dated 13 October 2010. Again, I think it's one of the documents in this multi-document exhibit, but it will be easier if you look at it on the screen. Now, you may need the second page, as well, on the screen, I think, Mr Steinberg?---Well, yes. And I've also got the facility amount that's redacted. Can you take me to that in my statement.

25

Yes, which is ANZ.160.004.0054. Thank you. I'm sorry. It is the document we have on the screen. ANZs counsel, I think, are assisting Mr Steinberg to find it in his hardcopy. Yes. The very last document under that tab, Mr Steinberg?---Which tab number was it, sorry?

30

The same tab, exhibit 21?---Yes, that's right.

Okay. So you now agree with me that in October 2010 ANZ increased the facilities to allow the Cheesmans to trade for the rest of the season?---Yes.

35

And we know from the credit memorandum which you saw, you had also exhibited, that it did this on the basis that the Cheesmans would clear the debt through the sale of assets in early 2011 before this loan expired in March 2011?---Can you put that to me again, please.

40

The basis upon which ANZ extended the facilities was that the Cheesmans would clear their debt through the sale of assets in early 2011 before this loan expired in March 2011. You can see from the letter of offer that's on the screen that the facility was a six-month facility?---That's right.

45

So it would have expired in March 2011?---Yes.

And we know from the credit memorandum that the basis on which ANZ took this action was that the Cheesmans would sell assets before March 2011, within six months?---So I – I agree that there was discussions and a request from the bank for the Cheesmans to sell assets to reduce debt. So I agree with that. I'm just having a  
5 look at the letter of offer to see if we actually had it - - -

Yes?--- - - - as a requirement in the letter of offer.

10 It is a requirement in the letter of offer. It's 0058?---Yes.

Under Other Conditions. You undertake – (i):

15 *Should the various properties which are listed there not be sold by private treaty on or before 31 October 2010, that the properties will be listed for public auction with auction to be completed by not later than 30 November 2010.*

?---Yes, that's right.

20 0058?---Yes.

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

25 So the loan term was for six months. And the Cheesmans were to sell their properties to clear their debt?---Yes, that was the intention.

And, after this, the Cheesmans did sell one of their properties. Is that right?---Yes, they did.

30 And they used the proceeds of that to pay down their debt?---Yes, that's right.

But they were unable to clear the debt by the time the facility expired in March 2011?---That's correct.

35 And then in March 2011 the file was transferred to lending services?---Yes.

And after the file was transferred to lending services, the ANZ staff member with primary responsibility for the file was Mr Ian Wormald?---Yes, that's right.

40 And Mr Wormald came to ANZ from Landmark?---Yes, that's right.

And around the time the file moved across to lending services, Mr Wormald prepared a takeover diary note which you've annexed to your statement?---Yes, that's right.

45 It's exhibit 5 to your statement, ANZ.160.003.0107. And, towards the end of this document at 0115, we see Mr Wormald's recommendation for how to deal with this file?---That's right.

And his recommendation was:

5        *Support a retain strategy in the interim, given the customer given the following: customers acknowledge current position is untenable and to this end have embarked on an asset sale strategy to improve businesses sustainability. And \$500,000 of the sale from the property I referred to earlier was applied towards permanent reduction in ANZ debt in March 2011.*

?---Yes

10

Continuing:

15        *And the cash flow budget provided to the bank projects that the customer will not require additional funding to meet operating expenses for the current season. Income receipts during the year will allow the customer to fund expenses during the course of the year.*

?---Yes.

20        And this retain strategy recommended by Mr Wormald, we see, was one of three strategy options that he had listed in the document above that, the first being retain, the second being upgrade, and the third being exit?---Yes.

25        Now, so the position was that on the basis that the Cheesmans had already begun selling their assets to reduce their debt and they wouldn't need additional funding from ANZ for the current season, ANZ would continue to support them while they sold off their remaining properties and repaid the debt. Is that right?---Yes, that's right.

30        Okay. Now, soon after this, Arthur Cheesman met with Mr Wormald. Is that right?---Yes.

And he told Mr Wormald that they were having difficulty selling their crop of lentils?---That's right.

35

And he asked ANZ to fund certain expenses of fertiliser and fuel, and some incidental expenses for the following year?---Yes, that's right.

40        And after that meeting in July 2011, Mr Wormald prepared another diary note which you've annexed to your statement as exhibit 6?---Yes.

45        ANZ.160.003.0150. So in July, the file having moved across to lending services in March and Mr Wormald having made the retain recommendation that I just took you to, in July there's another note from Mr Wormald. And we see towards the end of that document at 0161 that Mr Wormald again makes a recommendation. Mr Wormald again set out the strategy options. And one of those was a managed exit.

Is that right?---I can see upgrade and I can see exit. Were you seeing another heading there?

5 I'm sorry. The pages are out of order in this exhibit. Can I ask you to look at 0163, where you will see the reference to managed exit as an option?---Yes, I can see that.

That is actually the page that appears before 0162 in the document. So this is the second-last page of the document. Do you see the managed exit option?---Yes, I do.

10 And we see there that:

*That option is interim retain strategy to be adopted, whereby all existing facilities are extended to 31 March –*

15 The following year 2012:

*...conditional upon an AMA being entered into with the customer. AMA to require the sale of all properties by 31 March the following year to clear ANZ debt in full.*

20 ?---Yes.

So now the position of ANZ is that they will have a further eight months within which to sell the properties. Is that right?---Yes, that's right.

25

But that was conditional upon this AMA being entered into. An AMA is an asset management agreement. Is that right?---Yes, that's right.

30 And could you explain what an asset management agreement is?---Yes, it's an agreement between the bank and in this case the Cheesmans whereby we set out the – the terms by which we will conduct a relationship involving the management of assets, in this case the sale of assets, and at the same time either forbearance or extension of facilities from the bank.

35 And we see from further down this page that this was the strategy that Mr Wormald recommended. He recommended the managed exit strategy at this point in July 2011?---Yes, that's right.

40 And a few months after this in October 2011, in line with that recommendation, ANZ sent the Cheesmans a new letter of offer?---That's right.

Okay. Now, that letter of offer is exhibit 22 to your statement, ANZ.160.004.0002?---Yes.

45 And the figures have been redacted, but under this letter of offer there was a facility of a certain amount and an overdraft of a certain amount offered to the Cheesmans?---That's right.

- And we see from the second page, 0003, that those facilities were offered for just over five months until 31 March – 31 March 2012?---Yes.
- 5 And the facilities were secured by mortgages over the remaining properties?---That's right.
- And they were also secured by a crop lien?---Yes.
- 10 And guarantees were given by Arthur and Rhonda Cheesman?---Yes.
- And ANZ took a stock mortgage over all the livestock on the farm?---Yes.
- 15 And we see at 0006 that it was a condition precedent to ANZ making the facility available that the Cheesmans entered into a particular asset management agreement with ANZ?---That's correct.
- And ANZ provided the Cheesmans with the asset management agreement together with this letter of offer?---Yes.
- 20 And you've exhibited that asset management agreement to your statement. It's exhibit 17, ANZ.160.004.0013?---Yes.
- And could I ask that you turn to 0015 in this document. We can see there it's an asset management agreement between ANZ and the Cheesmans. And under the heading Background:
- 25
- The parties have agreed to enter into this document to reflect a strategy agreed by them. The strategy involves a debt elimination by way of sale of the security property.*
- 30 You see that?---Yes, I do.
- And, further down the page in item 2, we see a reference there to the Cheesmans being liable to ANZ for certain amounts and a reference to them being in default under their facilities?---Yes.
- 35
- And if we turn to the following page, 0016, we see there that, under clause 3, the agreement makes clear that ANZ agreed to temporarily withhold from enforcing their securities, provided that the Cheesmans complied with their obligations under this agreement?---Yes.
- 40
- And under clause 4.1, further down that page, those obligations included appointing a real estate agent to sell all of the security property?---Yes.
- 45 And a bit later in the agreement, at 0025, we see – and perhaps I needn't take you to this. We see the definition of security property there. You accept that it covered all of ANZs secured property?---Yes, I do.

So it included the blocks where Mr and Mrs Cheesman lived and the blocks where Reuben Cheesman and his wife lived?---Yes.

And it included their crops?---Yes.

5

And it included their other assets?---That's right.

Now, if we turn back to clause 4, which dealt with the sale of the security property, and if we for now ignore the handwritten annotations on this document, which I will come back to, we can see that the agreement initially said that if the properties didn't sell by 30 November 2011, the Cheesmans had to put all of their properties to auction by 15 March 2012?---Yes.

10

So, under the agreement, the Cheesmans had less than two months to sell all of their properties?---Can you just take me to the date when this was executed, Ms Orr.

15

Well, it's sent to the Cheesmans with the letter of offer which was dated 12 October 2011?---Okay.

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

20

The letter of offer refers to it - - -?---Yes.

- - - being enclosed. So do you accept that this agreement gave the Cheesmans less than two months to sell all of their properties?---So if they had this for the month of November, December and half of January, that's two and a half months, yes.

25

Thank you. And if the property didn't sell at auction, we see from clause 4.1(p) at 0017 – if the property didn't sell at auction, the Cheesmans had to surrender possession of their properties to ANZ within seven days of ANZs demand?---Yes.

30

Does ANZ still use asset management agreements, Mr Steinberg?---Yes, we do. Each one is specific for the circumstances.

And under what sorts of circumstances does ANZ ask customers to enter into asset management agreements now?---It – well, it depends on the individual circumstances. If I could just put a little bit of background to this particular - - -

35

I want to ask you some more questions about this particular agreement?---Yes.

40

So we will come back to that. But can I pause and just ask you to deal with the situation now. When now does ANZ ask customers to enter into asset management agreements?---So, typically, in situations where we've agreed with our customer that assets are to be sold in order to repay the bank's exposure, then it's possible in those situations we will enter into what we might term an asset management agreement with that particular customer, again, designed to outline a program of asset sales and at the same time outline the support to be provided by the bank in return.

45

So you say it's possible in those circumstances that the bank will ask the customer to enter into an asset management agreement. Can you be more specific. In what circumstances does it happen?---There – there's no prescribed time for this to happen. These are decisions that are made based on the individual circumstances and using the judgment of the – the relationship managers and the credit officers who are managing that file. But there's no prescribed set of circumstances that point you into this direction.

Are there any criteria that need to be satisfied before this step is taken?---No. It's a – it's a judgmental credit decision made by the – the authority holders.

THE COMMISSIONER: Unguided?---I'm sorry, Commissioner?

Unguided?---So we're generally guided by the strategy for that particular file, as well as our customer and what our customer is looking to achieve. So, again, if I could bring it back to the Cheesmans, my understanding from reading the file is that there was quite a long period of time when the bank and Landmark before that and the Cheesmans were talking about selling assets to reduce their debt levels. And there was some concern in this particular case that the properties weren't being put up for sale at prices that would attract seller – buyers. And – so I think a combination of those, together with the acknowledgement from the Cheesmans that they needed to sell assets to repay debt, led to the asset management agreement.

MS ORR: Would ANZ now enter into an asset management agreement with customers in the same terms as this agreement?---Again, it depends on the circumstances.

So it might?---It might, depending on the circumstances. But every case is analysed on – on the individual circumstances that apply. Today, we are guided by different practices that we've established. So it's true to say that we do look at these differently today, compared to how we looked at them, you know, earlier.

Now, I just want to give you an opportunity to deal again with a question I asked earlier about how long the Cheesmans had to sell the property under this asset management agreement?---Yes.

I think you said ultimately that it was two and a half months?---In accordance with this asset management agreement, that's right.

Well, I just want to make sure that you understand that the letter of offer that contained this document went to the Cheesmans partway through October?---Yes.

And they had until the end of November to sell their properties?---Yes.

So less than two months?---Yes. Although, on the copy that I've got, the November has been scratched out and replaced with 15 January.

5 Yes. Now, I want to come to that. I want to come to the subsequent discussions that led to some amendments, but the original asset management agreement that ANZ provided, which was – acceptance of which was a condition of the term of offer – of the letter of offer, gave the Cheesmans about – well, about six weeks to sell all of their properties?---Yes. Yes, that’s right.

10 Yes?---But, again, if I could just put some context into that, if I may. There – there was an agreement with the Cheesmans before this that assets would be sold to repay debts.

Yes?---So I would just like to put this in the context of this not being the first time that that was requested or discussed.

15 No?---This – this strategy does go back to pre-ANZ acquisition and with Landmark. And, on my review of the file, I did see, you know, evidence that indicated that the Cheesmans were accepting of - - -

Yes?--- - - - the need to sell assets.

20 Yes?---And in fact - - -

They had sold one?--- - - - they agreed that that needed to be done.

25 Yes, but the difference is you asked them to sign up to this agreement which gave them six weeks to do that and then told them if they didn’t, they had to vacate their properties within seven days upon ANZs demand?---That’s right. That’s what it says.

30 Okay. Now, the Cheesmans didn’t sign this agreement immediately, did they?---So I’m not aware of the individual occurrences between it going out and it being signed, but I can see that there were some changes made to the agreement.

35 Yes. Well, we can see from documents you’ve exhibited to your statement that a couple of weeks later, on 28 October, the Cheesmans and their accountant called Mr Wormald to discuss the asset management agreement?---Can you take me to that document, please.

Yes. Exhibit 27, ANZ.160.003.0057 - - -?---Yes.

40 - - - is a diary note, dated 28 October 2011. I’m sorry. We’re going to need to turn – again, it’s one of your exhibits that has multiple documents within it. It’s the second document in your - - -?---Yes.

45 - - - hardcopy there?---Yes.

A diary note of Mr Wormald’s – note of his conversation with the Cheesmans and their accountant. And we see there that Mr Wormald recorded, second paragraph:

5           *They understand that assets need to be sold in terms of the asset agreement, either by 30 November or by auction by 15 March, but they wanted to know if they could have some more time to sell their houses. They intend selling the land and leasing it back, and using sharefarmers to help them farm it going forward. They also wanted to keep machinery so they could earn income from contracting.*

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

10       And Mr Wormald responded to that. And one of the things he said to them in the second bullet point there was that:

15           *The offer of facilities before them was the bank's best offer, and it was unlikely that the bank will amend those terms unless there was a strong compelling reason to do so. However, the Cheesmans are free to send me any proposals for the bank to consider. The AMA required all property to be sold, including the houses.*

20       You see that?---Yes, I do.

25       And he went on to tell them in the final bullet point that if they sent him a proposal to vary the terms of the AMA and the bank declined their request, then they would need to be ready with a fall-back position, because it's an option for the bank to issue statutory notices to take possession of the properties under the mortgage?---Yes.

30       Okay. And that day the Cheesmans' accountant wrote to ANZ with a formal proposal for amendments to the asset management agreement. And we see that from the first document in this tab, if you turn back to the start, Mr Steinberg, which is ANZ.160.005.0403?---Yes.

35       The email from the accountant to Mr Wormald?---Yes.

40       I will just wait till that comes up on the screen but if you could read through that, Mr Steinberg. We see that the main amendment was to exclude from the definition of security property the two properties where they lived. They didn't want to have to sell their homes within that time. Do you see that?---Yes, I do.

45       And he also proposed that their equipment and machinery be excluded?---Yes, that's right.

50       So the Cheesmans wanted to delay selling their homes and their means of earning a living to see if they could clear the debt through the sale of the other properties?---That's right.

55       And if they couldn't clear the debt entirely or refinance after clearing most of the debt, then they accepted that they would need to sell their homes and equipment at that stage?---So what I see is put is our clients are merely making this request so they

may have the chance to retain their home and livelihood. Is that the sentence you're referring to? Yes, that's right.

5 And have the opportunity to refinance the smaller debt that they would have if there was anything left over after selling all the other properties?---Right. So you're referring to the third paragraph, or retain refinance?

Yes?---Yes, that's right.

10 Yes?---Yes.

And someone at ANZ prepared a diary note recording the consideration that was given to this request. You've annexed that again in exhibit 27. It's the third document behind that tab. And it's ANZ.160.003.0053. Do you know who prepared  
15 this document, Mr Steinberg?---It appears to me that it was prepared by Ian Wormald. I am making that assumption based on the fact that his name is at the bottom of it, but - - -

20 Yes?--- - - - I can see it's not signed, so - - -

And do you know who made the handwritten annotations that appear on the document?---No, I don't.

25 Is it possible it's Keith Weybury, the senior manager whose name also appears on the document?---I think that's possible, yes.

And we see on the first page, 0053, under the heading Current Position, a summary of the proposal. Do you see that there?---Yes, I do.

30 Continuing:

*The customer emailed the bank seeking a variation to the proposed terms and conditions as follows: exclude from sale certain properties - - -*

35 ?---Yes.

40 *- - - which had most of the improvements, including the houses where they live; exclude from sale of assets equipment and machinery items, and seek bank's permission to delay sale of the excluded assets or the obtaining of refinance by 31 May 2012.*

?---Yes.

45 And then, under the heading Recommendation over on 0054 – and perhaps we could have 0054 and 55 on the screen – we see that the author of the document, you think Mr Wormald, was prepared to consent to the request in relation to one of the two house blocks. See that down the bottom:

*\*\*Writer is prepared to consent to the customers' request, but I suggest they cannot keep both houses. One has to go.*

?---Yes, I can see that.

5

Continuing:

*I would suggest the more saleable of the two would be the Scottsdale property, as this is 251 hectares and on six titles. The other property is 42 hectares and has been heavily capitalised with a refurbished house and several machinery sheds and silos. However, we should allow the customer to decide which one they would prefer to sell.*

10

And do you see there the handwritten note, "Why?"?---Yes, I do.

15

And we see that Mr Wormald, also, on 0055, suggests responding to the customer as follows:

*All land assets to be sold at an auction no later than 15 March 2012, except one house property of their choosing.*

20

And next to that we see the handwritten amendment, "No." Do you see that?---Yes, I do.

And a few days later, ANZ told the Cheesmans that ANZ wouldn't accept their proposal?---Yes, that's right.

25

Right. Now, could I take you to exhibit 27 still. It's the fifth document, ANZ.160.003.0051?---Is that also in 27?

30

Same – yes, that's right. Fifth document in?---Fifth document in. Yes, I've got it.

It's another diary note. A diary note of that teleconference between Mr Wormald from the bank, Mr Gladshtein from the bank and Mr Cheesman's accountant to convey the bank's position?---Yes.

35

And we see there that I.W., Ian Wormald, the fourth dot point down:

*Reiterated that the bank would not accept the Cheesmans' proposal and the current letter of offer and AMA issued to the Cheesmans stands. However, I.W. stated that if the Cheesmans required additional time to sell all the properties, the bank would be prepared to extend the private sale milestone date from 30 November 2011 –*

40

Bearing in mind that by now it's 3 November 2011 –

45

*to 31 January 2012 and the auction milestone date from 15 March 2012 to 31 March 2012.*

?---Yes.

5

And we see further down there in the next dot point that Mr Wormald told the Cheesmans' accountant that the bank required full repayment of the outstanding debt and, in the event that the Cheesmans do not sell all properties as stipulated in the AMA, the bank will call up the debt?---Yes, I see that.

10

Now, that position in relation to the amended dates is reflected in the handwritten annotations we saw on the asset management agreement. Do you recall that?---Yes, I do.

15

And then can I take you to another document in this exhibit which is a diary note dated 13 January 2012. It's the sixth document, ANZ.160.003.0047?---Yes.

20

We see that a couple of months later in January of 2012 the Cheesmans' accountant called Mr Wormald with an update after meeting with Mr Cheesman?---Yes.

And he told Mr Wormald that the auction was scheduled for 10 February 2012?---Yes.

25

And Mr Wormald said that the property should be sold as a whole, including all houses and sheds. And he said to the Cheesmans' accountant:

30

*The bank does not want to be left with a residual debt secured by an over-capitalised piece of land with houses and sheds. Peter agreed that the house and sheds should go with the sale and should be sold. Both Arthur and family have nowhere else to live.*

I'm sorry. Yes:

35

*But Arthur and family have nowhere else to live.*

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

40

So the bank was aware of that by January 2012, that the Cheesmans wouldn't have a place to live if this plan proceeded?---Yes, that's what the note says.

Yes. Okay. And then can I ask you to turn to the document behind this, which is ANZ.160.003.0046?---Yes.

45

And we see a couple of weeks later on 27 January there's a phone call between the Cheesmans' accountant and Michael Gladstein, who appears to be an assistant manager at ANZ?---Yes.

And in the second bullet point the Cheesmans' accountant again told ANZ that the Cheesmans were concerned that they would have nowhere to live after the properties were sold. You see that?---Yes, I do.

5 And we see in the fourth bullet point there that Mr Gladstein reiterated that the bank did not want the house with residual debt and required the properties to be offered as a whole?---Yes, I see that.

10 And underneath that, down the bottom of the page, we see someone has written:

*We should be firm here.*

?---Yes, I can see that.

15 Do you know who wrote that?---Well, it's written under Keith Weybury's name, so I'm assuming it's written by him.

20 What do you think of that statement, Mr Steinberg?---Looking – looking back on it and the events that you've just described, I find it – I find it sad that that happened. I'm struggling with it. If this was done today, it would be done – it would be dealt with in a different way. I guess as a counterbalance, I could only, you know, put this in the background of – of the fact that there had been longstanding arrangements with the Cheesmans to – to sell these assets and they understood that they had the obligation to repay the bank. But I accept that it's difficult reading what we've read.

25 They did understand that. The documents make that clear. And they were attempting to sell their properties, weren't they?---They were.

30 And all they asked for from the bank was that you exclude the parcels of land that contained their homes, and you exclude the equipment that would allow them to continue to earn income?---That's right.

And the bank was not prepared to do that?---That's right.

35 So after this diary note, on 27 January, the Cheesmans' accountant set out a proposal that the land be sold in three separate lots in an email?---That's right.

40 And Mr Wormald prepared a diary note about that proposal, which is also in this same exhibit. It's the tenth document in the exhibit, ANZ.160.003.0043. And you see there on the first page, under Purpose of Diary Note:

*Customer has written seeking consent for reserve prices and to amend auction conditions by auctioning house blocks separately or defer sale of houses to a post-auction date.*

45 ?---Yes.

And, over the page at 0044, under Current Status, we see Mr Wormald has recorded:

5           *There has been no interest in the house blocks, as the prospective purchasers  
have expressed interest in the rural farmland only. The customer is concerned  
that there will be no value realised for the house blocks and, in fact, may be  
devalue the arable land for sale. As such, they seek the bank's consent to  
10           auction the house blocks separately or defer the sale of the house to a post-  
auction date. Customer feels that including the houses in the auction will have  
little bearing on the auction result and they want to retain the houses to explore  
the option of retiring ANZ debt in full by sale of plant and equipment and grain  
on hand.*

?---Yes.

15       And, under the heading Commentary, we see that Mr Wormald contacted the valuer  
who had valued the properties?---Yes.

20           They had been valued in June 2011. And he spoke with the valuer about the  
marketability of the house blocks if they were to be offered separately to the  
farmland?---Yes.

And we see there a reference to the [REDACTED] block which Reuben Cheesman  
and his wife lived on, having a home on it, but:

25           *Otherwise, it's over-capitalised with improvements and would be difficult to  
sell in isolation.*

?---Yes.

30           And:

35           *The ..... home block property of 73 acres has a relatively good five bedroom  
weatherboard house on it with a couple of sheds and stock yards. And the  
valuer indicated that this would have much better prospects of being sold as an  
individual offering. House is relatively close to St Arnaud and with a value in  
the low 200s would suit the semiretirement market or another farming couple  
as an add on. Writer understands the customer's predicament in wanting to  
retain the house properties to avoid jeopardising value if sold with the arable  
land.*

40

That's the predicament that's being referred to there, jeopardising the value if the  
houses are sold with arable land. You agree with that?---I'm not exactly sure what  
that sentence means. It seems to be counterproductive. On the one hand, it's saying  
that if they split the house, then it will jeopardise the value. On the other hand, the  
45           valuer indicated that that might not happen. So I'm not exactly sure what that  
particular sentence means.

Well, I want to put to you that it means the predicament that's being referred to there is the predicament of getting a lower value if the houses are sold with the arable land -- -?---Yes.

5 - - - rather than sold separately?---Yes. Yes.

And that wasn't the full extent of the Cheesmans' predicament, was it?---I'm sorry. I didn't get that last question.

10 That wasn't the extent of the Cheesmans' predicament, was it? I will be clear, Mr Steinberg. The other problem, the more significant problem for the Cheesmans, was that if the house blocks were sold, they would have nowhere to live?---Yes, that's right.

15 But Mr Wormald didn't mention that as a consideration here?---No, it's not mentioned.

And Mr Wormald went on to say in the fifth paragraph

20 *If the bank allowed the arable land to be sold for around two point –*

I'm sorry. I will say at this point, Commissioner, that we've done some checking while I've been on my feet and we do not understand the basis for the redactions to financial information. As far as we can see, there is no non-publication direction that  
25 permits these redactions. I have been endeavouring to work around them, but I will put ANZ on notice now that we do not believe that there is an order that permits these redactions to have been made. And if we are wrong about that, ANZ can tell us. Now:

30 *If the bank allowed the arable land to be sold for a particular price without the house blocks, this would still leave a residual debt of approximately –*

A certain figure:

35 *...to be repaid from the sale of house blocks, say –*

A certain figure:

40 *...remaining grain on hand and plant and equipment. Customer has not provided any detailed proposal in support of their request to the bank for the house blocks to be removed from the auction. However, it appears from the customer's feedback that, irrespective of the houses being included or not, the sale value would not materially change... we have a choice – exclude the houses from sale and realise circa –*

45

A particular figure:

*...or include the houses in the auction and realise circa –*

A particular figure, which is the same figure, isn't it, Mr Steinberg?---Yes, it is.

5 Continuing:

*It may be best to have a residual debt of –*

a particular figure:

10

*...with the two houses as part of the security, rather than having this residual debt without them.*

?---Yes.

15

And we see, over the page at 0045, that Mr Wormald concluded this note by saying:

*To make an informed opinion, I need to find out more from the agent via the customer if the reserve price would be materially different with or without the houses.*

20

?---Yes, that's right.

25 So at this point, there's some prospect, a real prospect, that the exclusion of the houses would not have made any difference to the sale price?---Yes. According to this diary note, that's right.

And Mr Wormald sent this note to Mr Weybury?---Look, there's a – there's a signature below Mr Weybury's name. I don't know if that's his, but - - -

30

Well, could I?--- - - - I think it's likely that that did happen.

35 Could I direct you to the email in which it does happen, which is the ninth document in this tab, ANZ.160.003.0042. You see the diary note is annexed to that email?---Yes, I can see that.

And, in response, Mr Weybury said:

*Any proposal must cover everything on how ANZ will be cleared.*

40

Do you see he says there - - -?---Yes, I can see that.

Continuing:

45 *There is not a deal here at present. I do not want to be left with the over-capitalised house block and the shortfall.*

See that?---Yes, I do.

5 His sole focus was on seeing everything sold?---Yes. I think that's one way of putting it. The other way of putting it is that his focus was on getting the bank repaid in full, which clearly resulted in all of those assets being sold.

10 And that was his position, even though Mr Wormald's note to him indicated that it might not have made any difference to the price whether the house blocks were included or excluded?---That's right, Ms Orr, but if my memory serves me right, there is another document which comes to my memory, but I don't know exactly where to find it, where there is a reference to an opinion from a valuer that suggests otherwise, that – that if you sold them, that it would make some difference and, in fact - - -

15 A subsequent document?---I just recall seeing the document. I can't recall the date on it as I sit here, so - - -

Yes. Well, let's assume there was, Mr Steinberg?---Yes.

20 What I want to put to you is at this time, given that the consequence of selling the house blocks was that the Cheesmans would be without a place to live, wasn't it worth at least exploring the possibility of seeking further information about the impact of selling the houses – sorry – selling the blocks with or without the houses?---Yes.

25 But Mr Weybury was not interested in doing that, was he?---Well, I wouldn't use the terminology he wasn't interested. He has clearly said no to that proposal.

30 We know that ANZ rejected the proposal, don't we?---Yes, that's right.

And they required the auction to go ahead with both of the house blocks included?---Yes, that's right.

35 Is that the approach that ANZ would take if a similar situation arose today?---No.

What would ANZ do differently now?---Well, today we would take a more empathetic approach to the needs of our customer. We – as you've read in – in my statement, we've now established a specialist agri-team - - -

40 Yes?--- - - - that deals with agricultural customers. We're guided by what's called our lending services purpose, which guides the way we should respond in these types of situations. And we would more likely look at an option that would, if possible, result in some retention of homeownership.

45 And do you think the community would have expected ANZ to handle this situation differently at this time?---So I think that's a complicated question to answer. I think there are certain parts of the community that would not expect us to – to do that. I

think in this case there could be other parts of the community that would potentially have a view that if the bank is owed the money and they've got the contractual right to recover it, then the bank has the right to do that. So - - -

5 Just to be clear, which parts of the community do you think would take that view?---Look, I don't know. I'm just putting out the possibilities that there could be different views on – on this. As I said, right now if we were dealing with this, we would deal with this matter differently. And we acknowledge that in this particular matter with some of the other occurrences that occurred, that we have breached  
10 community standards in the way we've managed this file overall.

Do you think the community would have expected that ANZ would do more to structure the sale in a way that might not have left the Cheesmans without a place to live?---Again, I can just repeat what I said earlier. I think there are certainly parts of  
15 the community that would expect that. But I also think that there might be other parts of the community that would – would take a more, you know, contractual or legalistic approach to it. Irrespective of that, our current practice would be that we would support a strategy that, if possible, would involve home retention.

20 THE COMMISSIONER: And why have you adopted that practice as your current practice?---Commissioner, over – through our experiences over the last few years, we've learnt that we haven't always dealt with our agricultural customers with as much empathy as we should have. And, as I said, that has resulted in a change in the way we – we operate. It has resulted in a cultural change in our department, which is  
25 really guided by the lending services purpose and requires us to demonstrate more care and empathy towards our customers.

Well, you've made the changes because you think it's the right thing to do. Is that correct?---Yes, that's correct.  
30

That's a view which has been formed in recent times?---Yes. I would say the genesis is probably around 2014. And then it has evolved since that time onwards.

I just wonder why it is that you hesitate to give your view about community  
35 standards and expectations at that time, while at the same time you acknowledge that today you should act differently. What has changed in the meantime?---Well, I think there has been a change in the way community expects banks to behave more generally. I think that that has been driven by a number of different factors. And banks are responding to that. And, in particular, the parts of the bank that do the  
40 work that I do, which is the restructuring and the recovery area, are reassessing – constantly reassessing the way we do things as a result of what we see to be a change in community's attitudes towards what we should do.

45 You see, there's a difference between community pressure and standards, I would have thought. I want you to grapple with the question of standards. What was the right – what was the right thing to do at the time of these events?---I think the right thing to do at the time of these events would have been to structure a different

arrangement with the Cheesmans, one that would have potentially given them an opportunity to retain some form of homeownership, as well as retaining some way of earning an income. And that could be achieved in a number of different ways, potentially, but I think that would have been the right way to approach it.

5

I am struck by the fact that you accept that that's the right thing to do, and yet you hesitate to say that that's what the community would have expected. I just see a disconnect between the two. Now, tell me I'm wrong. How?---So, Commissioner, I don't want to suggest that you are wrong.

10

A lot of people do often, Mr Steinberg. Join the queue. They're probably right?---You know, we spend quite a lot of time discussing these sorts of issues as we've been preparing these submissions. And, you know, I want to be careful about, you know, exactly what I say and make sure that I don't offend anyone, but I do talk to people in the community who feel that – that banks have an entitlement to recover all of the money that they lend. And then I talk to other people in the community who feel exactly the way that – that I'm feeling and the way that I think we should have responded to the Cheesmans. So in that sense, that is the reason for my hesitation, in that I – I feel that there are different groups of people in the community who would potentially look at this sort of a matter differently. But, notwithstanding that, the position that we're taking at ANZ is that, you know, we want to do as much as we can to support our customers with empathy and as much humanity as we can.

15

20

MS ORR: I just want to give you an opportunity to answer one question connected with those questions, Mr Steinberg, which is why didn't you acknowledge in your statement that ANZs repeated refusals of the Cheesmans' request to retain their homes fell below community standards and expectations?---Can I just have a look at how I framed that in my statement.

25

30 Yes?---Would you mind if I do that?

Yes?---Thank you.

35 And, if it assists, there are other parts of the Cheesmans' story that I am yet to get to -- -?---Yes. Yes, that's right.

-- - that you have acknowledged are below community standards and expectations. But there was no acknowledgement by you, as I read it, that the conduct that I have so far taken you to fell below community standards and expectations?---Yes.

40

45 And I want to ask you why that's so?---Look, the best answer I can give you now, Ms Orr, is that I think it comes down to the discussion that I just had with the Commissioner that – that there was a longstanding agreement with the Cheesmans that they would sell their property. And, from my reading of the file, there was an understanding that they would be selling all of their property in order to repay debt. My recollection is that they were prepared to do that during the course of their dealings with – with Landmark and then with ANZ. And so this requirement was

consistent with the arrangements that we had with the Cheesmans for a number of years. It was in – within the bank’s contractual obligations. And that’s, as far as I can remember now, is probably what fed into that conclusion.

5 And you agree, don’t you, that there are other aspects of ANZs conduct across these seven statements where ANZ had a contractual entitlement to do what it did, but you have nonetheless accepted that the conduct fell below community standards and expectations?---Yes. I think every one is different and every one needs to be debated based on all of the variables and the unique circumstances that exist.

10 Yes?---It’s not a – it’s a difficult conclusion to reach on each individual file. And – yes – when we reach the conclusion on the Cheesmans around the breach of community standards, it did for us – for me centre on the 2012 - - -

15 Yes. On the events we haven’t got to yet?---That’s right.

And I just want to be clear, before we go to those events, what your position is now about whether the events that I have asked you questions about this morning involve conduct by ANZ that fell below community standards and expectations?---For the events that we’re about to talk about or - - -

20 No. The events we have been talking about. What is your position now about whether those events, the way ANZ handled those matters, fell below community standards and expectations?---So are you asking me to reassess that position - - -

25 Yes, I am?--- - - - now?

I am. I want to know what your position is now. Having been through these documents with me, do you accept that ANZs conduct in relation to those events fell below community standards and expectations?---So, again, if I could just bring this back to our January submission where we – where we spoke about community standards. And, again, I don’t have that document in front of me, but my recollection is that we used terminology along the lines that we – we should do the things that we say we are going to do. And if I apply that particular lens in the case of the Cheesmans, what – what we did hear – I know this sounds harsh, and you can tell that I’m finding it hard to say this, but when you analyse it clinically, what we did in this case is we – we did what we said we were going to do. And not meaning for it to come across – you know, you’re asking me to analyse now whether I want to change my position. And when I draw it back to that statement, I’m – I’m still landing that – that if I use that statement as my guiding principle, that we didn’t breach that guiding principle of having not done what we said we were going to do.

35 Can I ask you to look at it through a different lens - - -?---Yes.

45 - - - which is the way you did what you said you were going to do. We have just seen through a lot of documents the way ANZ handled the process of asset realisation for the Cheesmans. Did the way ANZ handled that process fall below

community standards and expectations?---You know, again, unfortunately, I'm not able to make my way quickly into the documents, but as I think this through, Ms Orr, I'm recalling conversations with the Cheesmans where they acknowledged that they're going to sell all of their assets to repay their debt. I'm recalling documents, even though I can't quickly recover them now, that point to the Cheesmans telling us that they were going to, you know, embark on this sale strategy.

Yes?---I don't mean to justify the way it was done, so please don't interpret that in this, but you can clearly see that I'm -- I'm not quite getting to the point where I feel it's a breach of community standards when all of those things are taken into account.

I see?---You know, I'm analysing it in the way that I see it and as deeply as I can, you know, under the circumstances that I'm in right now. And that's where I find it lands for me.

Commissioner, I have been asking Mr Steinberg questions for some time.

THE COMMISSIONER: Yes. We should take a break.

MS ORR: I wonder whether if we might have a five minute break before I continue.

THE COMMISSIONER: Yes. Can we sort out over the break what the position is with those redactions.

MS ORR: Yes. Thank you, Commissioner. We will attempt to do that.

THE COMMISSIONER: I will come back at quarter to midday.

MS ORR: Thank you, Commissioner.

**ADJOURNED** [11.38 am]

**RESUMED** [11.45 am]

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, I have had some discussions with Dr Collins about the issues with the redactions in the documents. The situation is that the redactions were made in error. The error was drawn to the Commission's attention late last week. And it appears that there has been a misunderstanding about the steps that needed to be taken upon identification of that error. Mr Steinberg has versions of the documents which are unredacted. And Dr Collins is happy for me to refer to the portions of the documents that are redacted. And substitute copies of those documents without redactions will be made available for the court book.

THE COMMISSIONER: Thank you.

MS ORR: Now, Mr Steinberg, in the end, the Lens, Scottsdale and River properties owned by the Cheesman all sold at auction. Is that right?---Yes.

5

And that included the part of the Scottsdale property where Arthur and Rhonda Cheesman lived?---Yes.

10 But the property where Reuben Cheesman and his wife Katrina lived didn't sell at auction. Is that right?---It didn't sell. And I think it might be that it did go to auction and didn't sell. But I agree that it didn't sell.

Yes. Thank you?---Yes.

15 Could I ask you to look at your exhibit 28, ANZ.160.005.0287. And this is a letter from ANZ to the Cheesmans in April 2012. And we see from this letter that the proceeds of the sale were just under \$2.7 million?---Yes.

20 And that \$2.7 million was applied to the Cheesmans' outstanding debt?---Yes, that's right.

And there was still 630,000-odd left to repay?---Yes, that's right.

25 And in this letter, ANZ gave the Cheesmans a month, until 23 May 2012, to come up with a proposal to – for how to pay off the remaining debt?---Yes.

30 And a month later, on 23 May, the Cheesmans' rural financial counsellor wrote to ANZ. That letter is part of exhibit 31 to your statement, Mr Steinberg. That's the first document behind that tab, ANZ.160.005.0276?---Yes, I can see that.

And, by this stage in May 2012, the Cheesmans had taken further steps to discharge their debt. They had sold a tractor?---Is that referred to in this letter of 23 May?

35 No, it's not. It's referred to in the second document in this tab, which is an email, ANZ.160.005.0265?---Yes.

I just ask you to read that and see if you agree with me that by this point the Cheesmans had sold a tractor and they had applied the proceeds of that sale to pay down their debt?---This is 0265, is it?

40

Yes. I will just make sure I've got the correct reference. I have. It's in the second paragraph there?---Yes ..... tractor. Yes, I can see that.

45 All right. So in May 2012 they have sold a tractor, they have applied the proceeds of sale from the tractor to pay down the debt. And the Cheesmans' financial counsellor in that letter that we just went to, ANZ.160.005.0276 - - -?---Yes.

- - - asked ANZ to forgive the remaining outstanding debt, which was approximately \$550,000. The first document behind - - -?---Yes, I can see a request to forgive. The debts listed in that document as 630,000. So are you looking at this post the sale of the tractor?
- 5 I'm sorry. We need to keep moving between these two documents?---Yes.
- If you go back to the email behind that page - - -?---The 552, yes.
- 10 - - - you will see the reference to the 550 - - -?---Yes, I can see that.
- - - after the sale of the tractor?---Yes.
- Now, did ANZ decline that offer to – or that request to forgive the \$550,000 debt in full?---Yes, we did.
- 15 ANZ declined that offer the day after it received the letter from the rural financial counsellor?---I would need to see the document, but I – that sounds right to me, yes.
- 20 Yes. It's in that same email that we've just been discussing. That email is 24 May?---Yes.
- And, in that email, we see that ANZ gave the Cheesmans one more month - - -?---Yes.
- 25 - - - until 22 June to submit a proposal for how they would repay the debt in full?---Yes, that's right.
- And on 18 June, the Cheesmans' rural financial counsellor again wrote to ANZ with a new offer. This offer was an offer that they would pay \$250,000 in full and final settlement of the debt. And we see that from your exhibit 32, ANZ.160.005.0263 and 264. If we could have both of those pages on the screen. You will see there the offer - - -?---Yes, I do.
- 30
- 35 - - - to pay \$250,000 in full and final settlement of the debt?---Yes, I do.
- And ANZ rejected that offer, as well?---Yes, we did.
- And it gave the Cheesmans a week until 9 July to come up with another proposal to repay the debt in full?---Yes, that's right.
- 40
- And on 9 July 2012, at the end of that week, Mr Wormald and Mr Gladshtein met with the Cheesmans and their accountant and Pitcher Partners?---Yes.
- 45 And ANZ gave the Cheesmans further time to prepare a proposal with the assistance of Pitcher Partners?---That's right.

And that proposal was provided to the bank in August of 2012?---I thought it was a little but later than that, but can you take me – is this the one in - - -

Yes. Your exhibit 33?---33. Yes. That's right.

5

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

Was provided to the bank in August?---Yes.

10 And, after some revision, that proposal, essentially, involved the Cheesmans paying \$300,000 for ANZ to discharge its mortgage over the [REDACTED] property, the property that had Katrina and Reuben's house on it?---Is that part B of the offer that you're looking at? Because my understanding is that this offer – the first part of the offer was subject to capital being raised by Samuel Capital, so it wasn't an offer  
15 capable of being accepted. That's plan A. And I - - -

Plan B?---Plan B. I don't think that was capable of acceptance either.

20 Well, can we come to your view on whether it was capable of acceptance. What I asked you is whether the proposal, essentially, involved them paying \$300,000 for ANZ to discharge the mortgage over the [REDACTED] property?---Yes, it does. That's the proposal – plan B, correct.

25 Yes. And the Cheesmans were able to put that proposal because Katrina Cheesmans' parents, Reuben's wife's parents, were able to pay \$300,000 so that their daughter and son-in-law could stay in their home?---Yes, that's right.

30 And the bank didn't accept that proposal. You wanted to say that it wasn't capable of acceptance. Is that right?---Yes. My understanding, Ms Orr, is that this plan B was never finally considered, because there was another offer that came in straight afterwards, which was the offer in – I will just go to my statement – the offer on 18 October. Our response to the 22 August offer was to confirm which settlement proposal that the Cheesmans wish to proceed with. And they didn't come back with either A or B. But, instead, they produced another proposal on 18 October.

35

Okay?---So I don't think that those two, the plan As and the plan Bs, actually were considered.

40 Could I ask you to look at your exhibit 35, ANZ.160.005.0167?---35?

40

Yes?---Yes.

And we see there a communication in August 2012 - - -?---Yes.

45 - - - containing that proposal I have referred to. You will recall, I think, Mr Steinberg, that there is a bit of toing and froing and the proposal is revised?---Yes.

5 This is where the proposal gets to at this point, because Rob and Gill Stewart are prepared to provide \$300,000?---Yes, I can see this proposal on 24 August has got two parts to it. One part is for this 300,000 to be sold through the purchase of the property. And then the second part is an asset sale proposal involving asset sales of 284,000. So my understanding was that this was one offer of about \$584,000.

And we see – I just want to direct your attention to the following document, ANZ.160.005.0162?---Yes.

10 We see there in August discussion within ANZ about ANZ having undertaken a review of the proposal that we just looked at - - -?---Yes.

- - - in that email?---Yes.

15 And it's not acceptable, due to the sale value of \$300,000 for the [REDACTED] property being below the recent valuation - - -?---Yes.

- - - of \$390,000?---Yes, that's right.

20 So that was the basis upon which it was communicated that that proposal was not accepted?---That's – that's right.

Now, the bank still had its mortgage over the [REDACTED] property?---That's right.

25

And if it forced the Cheesmans to sell that property, ANZ thought it could get more than the \$300,000 that was being offered?---That was the basis of the decision, yes.

30 So, instead, it gave the Cheesmans a couple of weeks until 14 September 2012 to pay the outstanding debt down to \$300,000?---Can you just take me to that document, please.

I will take you to a document that's not in your statement. It's ANZ.800.716.4590. It will be in the tender bundle, I think, provided by your counsel?---Yes.

35

Do you see there the letter dated 30 August 2012?---Yes, I do.

Giving the Cheesmans until 14 September to pay down the outstanding debt to \$300,000?---Yes.

40

45 And, at that time, ANZ said it would accept the offer of 300,000 from Katrina's parents?---Actually, Ms Orr, I found that second paragraph a little bit difficult to understand. What it says is please note that if the balance outstanding plus accrued interest and fees is reduced to below 300,000, then ANZ will be prepared to discharge its mortgage over the property in exchange for sufficient funds to clear the debt in full.

Yes?---So I don't quite understand whether what it needed was an offer of \$300,000 plus the debt in full, which is, I think, how it reads, or whether it was saying that – that if the balance is otherwise reduced to below 300,000, they would reduce the mortgage. There is a bit of inconsistency in that paragraph.

5

Well, I want to put to you that it was conveying to the Cheesmans that they needed to pay their outstanding debt down to \$300,000, then ANZ would accept the \$300,000 that was to be provided by Katrina's parents. And if they didn't reduce the debt down to 300,000, we see that ANZ says it is going to instruct its solicitors to commence enforcement proceedings?---So there's two questions there. I agree with the second part of your question.

10

Yes?---And I – I find that that second paragraph is a little bit unclear. But I think what it's saying is they're not accepting the – you know, ANZ is not accepting the \$300,000. I think the bottom line is we're not accepting the offer that is put to us.

15

I see?---Yes.

I see?---Although it's confusing as to how that sentence is written.

20

Yes. So this is when the Cheesmans are told that, if they can't comply with these terms, your solicitors are going to be instructed to commence enforcement proceedings?---That's what the letter says, yes.

25

That's August 2012, the end of August 2012. And by the end of September 2012, the Cheesmans have sold their cattle, they have sold more equipment and they've managed to reduce their debt down to about \$450,000?---Yes.

30

Now, before I move on, I will tender that letter, Commissioner.

THE COMMISSIONER: Letter ANZ to Cheesmans, 30 August 2012, ANZ.800.716.4590, exhibit 4.14.

35

**EXHIBIT #4.14 LETTER ANZ TO CHEESMANS DATED 30/08/2012 (ANZ.800.716.4590)**

40

MS ORR: So through the action that they've taken in selling assets, they've reduced the debt from 550 to 450, but, despite the progress that they've made, the bank went ahead and instructed their solicitors to call up the debt?---So I can certainly see that letter that says that if it's not done, they will instruct lawyers to commence the process. Can you just take me to the letter that our lawyers actually wrote to them. I just can't quite recall that, but - - -

45

I'm asking you at the moment about instructions to the solicitor. We will come to letters that were written later?---Yes. It – yes, that's what the letter says.

5 Do you accept that at this time instructions were given to solicitors to call up the debt?---I don't know that based on what – what this document is saying is that if they don't provide this, then it is our intention to instruct solicitors. I'm not saying it didn't happen. It may well have happened, but I'm not able to determine that based on reading this document.

I'm just going to see if I can find a document to put to you?---Yes. Thank you.

10 Okay. I will put this document to you, Mr Steinberg, ANZ.800.716.4151. This is a diary note from 27 September 2012. And we see a reference there in the third bullet point down:

15 *Ian Wormald stated that, given the current status and the amount of time the bank has provided to the Cheesmans to clear the current outstanding debt, the bank will not be offering any further indulgences and have decided to call up the loan and issue FDM –*

Farm debt mediation –

20 *notices.*

?---Yes, that's right.

25 All right. You accept that was the position at that time?---Yes, I do.

I tender that document, Commissioner.

30 THE COMMISSIONER: Exhibit 4.15, diary note 27 September 2012, ANZ.800.716.4151.

**EXHIBIT #4.15 DIARY NOTE DATED 27/09/2012 (ANZ.800.716.4151)**

35 MS ORR: Now, before the bank could start enforcement action, it had to issue a farm debt mediation notice?---Yes.

And it did that in early October 2012, you tell us in your statement?---Yes.

40 And, in the meantime, the Cheesmans continued to sell their equipment and machinery?---That's right.

45 And by about mid-October 2012, they had reduced the debt further down to \$425,000?---That's correct.

And at that stage, they put another offer to ANZ, which was to pay \$285,000 in full and final satisfaction of the debt?---Yes.

And ANZ refused that offer?---Yes.

Because ANZ still had its mortgage over that property and it believed that it could get more if it sold the property?---Yes.

5

So the Cheesmans continued to sell off their remaining equipment?---I believe that's the case, yes.

By late December 2012, they had managed to pay the debt down to about \$275,000?---That's right.

10

And then on 27 December, just after Christmas in 2012, the Cheesmans' financial counsellor sent ANZ a letter which you've exhibited to your statement as exhibit 37, ANZ.160.005.0088. So this is a letter to the Cheesmans' rural financial counsellor:

15

*I refer again to the matter between ANZ and the Cheesman family and have been requested to make a final offer to the bank in an attempt to bring closure to a relationship which the bank has been very clear in stating it does not want the Cheesmans. The Cheesmans have been committed to selling down machinery items, albeit not as fast as they would like, nor at the prices they had hoped for, but they are continuing to sell and forwarding all proceeds to ANZ (they are not even retaining the GST component, but paying all sale proceeds to the bank). Today they banked the sale proceeds from a truck and drop deck trailer. The outstanding amount at 27 December is \$275,756.40. A family member has offered the Cheesmans a loan of \$250,000. The Cheesmans are keen to end their relationship with ANZ as soon as possible and, accordingly, \$250,000 is offered in its entirety as full and final settlement of their indebtedness to the bank payable within three business days of acceptance of the offer. They remain stressed from forced equipment sales, especially when less than budgeted prices, and confirm to me that they are worn out from trying to negotiate with ANZ Bank, with previous offers to be clear of the bank met constantly with a seeming unwillingness by the bank to acknowledge their claims in accepting a settlement.*

20

25

30

35 So that was the communication from the rural financial counsellor?---Yes.

Did ANZ accept that offer?---No.

Now, could I take you to ANZ.160.003.0080?---Is this in my exhibits?

40

It's in the tender documents, not your statement. This is a diary note prepared by Mr Wormald, it seems, about the offer contained in that letter that we just went to. We can see at the top of the page that the amount due at that point was \$276,000?---Yes.

45 And we see a note underneath that table there:

*Note: legal debt represents suspended interest only.*

?---Yes.

Continuing:

5           *There is no INC book debt remaining to record a provision or an ERV value.*

Now, could you explain what that means, Mr Steinberg?---Yes, Ms Orr. In short, without getting too complicated, what it, essentially, means is that the principal amount of the debt has been repaid.

10

Yes?---And what's outstanding is interest that hadn't been paid.

Yes. So they had repaid the entirety of the principal and the only amount outstanding was interest?---Yes.

15

I see. And we see on the following page, at 0081, that Mr Wormald records under the heading Current Status a few paragraphs down:

20

*Writer is prepared to consider the offer for the following reasons: settlement can take place within three days; it avoids the costs associated with mediation; mediation will most likely contain a similar negotiated compromise outcome; cost of enforcement and obtaining vacant possession is likely to be costly, time consuming and involve reputational risk. Rural counsellor has threatened a complaint to Financial Ombudsman in the past, which would potentially be a time consuming and costly process. Therefore, writer is prepared to counter-offer at a value of, say, 265,000 which aims to capture legal costs incurred to date of 3836 plus work in progress, including settlement.*

25

You see that?---Yes, I do.

30

That was the position taken by Mr Wormald?---That's right.

A counter-offer that would capture ANZs legal costs?---Yes.

35

I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 4.16, diary note 31 December 2012, ANZ.160.003.0080.

40

**EXHIBIT #4.16 DIARY NOTE DATED 31/12/2012 (ANZ.160.003.0080)**

45

THE COMMISSIONER: Ms Orr, I'm told that there has been reference – I hadn't caught it – more than once to a property by its street address. The street address or the road address of the property is subject to a non-publication direction. I just raise it, mainly to draw it to the attention of the media, that referring to the property by the

street address is subject to the NPD. I am sorry I didn't pick it up earlier. That's my fault. It's hard enough without me raising things late, but there we are.

5 MS ORR: I apologise, Commissioner. That is my fault. And that is the reference I have been making at times to the name of the property that Reuben Cheesman and his wife Katrina resided on.

THE COMMISSIONER: I think that's right.

10 MS ORR: So if it assists those reporting, the name of that property ought not be published.

THE COMMISSIONER: Yes.

15 MS ORR: Now, ANZ went back to the Cheesmans and said they would accept \$265,000 to settle the debt?---Yes.

\$15,000 more than the \$250,000 that the Cheesmans had offered?---That's right.

20 And the Cheesmans accepted that offer and paid the \$265,000 to settle the debt?---That's right.

And, as a result, they were able to keep the property on which Reuben and Katrina's house was located?---Yes.

25 But, by that time, Arthur and Rhonda Cheesman had lost their home?---That's right.

30 And the Cheesmans had sold their equipment and machinery so they couldn't continue farming on leased land to earn a living?---So they certainly sold a lot of machinery. Whether that constituted all or not, I don't know. But there was – I've got the number in my statement. It's a few hundred thousand dollars worth of machinery.

35 Four times the Cheesmans put proposals to ANZ to discharge the remaining debt and keep Reuben and Katrina's house?---Yes.

Is that right?---Yes, it is.

40 And four times ANZ refused their requests, because it thought it could get more money than what was being offered by the Cheesmans?---Yes, that's right, Ms Orr. Again, I would just like to put a little bit of context around this, if I could, please, by no means in an attempt to justify it, but just to give some context, if I may. As I go through these diary notes recording these conversations with the Cheesmans and with  
45 Mr Wormald, and the advisers, what I have observed which may have been one of the drivers for Mr Wormald is that Mr Wormald was constantly requesting that the Cheesmans account to the bank for the previous season's crop. You will see in my statement that we were expecting a little bit over a million dollars from that season's

crop. and Mr Wormald indicated that there was only about 100 and – let me call it \$130,000 that had been received out of the million dollar crop. And Mr Wormald is quite persistent and consistent in his requests to the Cheesmans and their advisers for an accounting of that stock – or the crop. My understanding is that I don't think that that issue was ever – ever bottomed out. But, from reading the file, it appears that some of those proceeds were – were banked into another – into a bank account with another bank. And I'm only putting that in as context, because I'm trying to understand how Mr Wormald came to – to the decisions. And I just think it's fair to – to put that into – into context. You know, but I'm not attempting to justify it; I'm just putting some context around it, please.

And that is not expressed by Mr Wormald in any of the documents to be the reasons or the reason for the position the bank took in response to any of the offers, is it?---No, but it's constantly appearing in his communications with the Cheesmans and their accountant. There's a constant theme of a request – I would call it almost persistent. It's more than constant.

Yes?---It's a – it's a theme that comes out to me quite strongly in the file.

Yes. And do you accept that in the documents that we have about Mr Wormald's reasons for rejecting those offers, the theme that we consistently see in connection with those reasons is that the bank has a mortgage and if it forces a sale, it will be able to get more money for the property than what is being offered by the Cheesmans?---I agree with that in that context that I – that I put before, that the bank felt that it could otherwise have been paid out by the crop proceeds that were subject to its crop lien. But I accept the proposition that you've put. I just think it's important to give it that piece of context if I could, please.

The four times that ANZ refused - - -?---Yes.

- - - the Cheesmans' request - - -?---Yes.

- - - to discharge the debt on a particular basis - - -?---Yes.

- - - each time it did that, the Cheesmans were at risk – put at risk of losing Reuben and Katrina's home, weren't they?---Yes.

Do we see anywhere in the documents where that matter is taken into account by Mr Wormald, Mr Weybury or any of the other people involved in these decisions?---Not – not expressly, but – but, as I said, this theme comes out to me quite emphatically.

About the crop?---Yes.

Yes. I understand?---It's a very, very emphatic theme to me, having not been involved at the time, but then reviewing the file, that this was an issue that was of concern to the bank.

Yes. And you acknowledge in your statement that the settlement offers that were made by the Cheesmans in June, October and December of 2012 were all reasonable offers?---Yes, I do.

5 And, in those circumstances, wouldn't the community expect ANZ to accept at least one of those reasonable offers, instead of requiring the Cheesmans to sell off their machinery and equipment and putting them at risk of losing their home?---Yes.

10 So you accept that ANZs conduct in these respects fell below community standards and expectations?---Yes, I do.

And you accept that by refusing those settlement offers, ANZ acted unreasonably?---No, I don't.

15 Well, I want to understand that, because you've described them in your statement as reasonable offers?---Yes.

20 So I want to put to you that the refusal of those offers was, therefore, unreasonable?---I think that the context that I put to you before, to me at least, gives some reason as to why those decisions were made. And, in those circumstances, I can understand why Mr Wormald continued to insist on full repayment of the debt, because he felt that the debt would otherwise have been repaid from the crop proceeds which were subject to ANZs lien. So if that had – in his mind, if that had happened the way it should have happened, then there would have been no residual debt and there would have been no requirement to sell, potentially, both of the homes – potentially. I'm – so, to me, that brings an element of reason to the decision. But as you articulate all those facts, I can see why any member of the community will listen to those and say that's not what we expect of a bank. And I'm prepared to accept that it fails to meet community standards and expectations.

30 The enforcement action that the bank was in the process of taking at this time was enforcement action in relation to the house, wasn't it?---So the one thing we didn't quite bottom out, Ms Orr, was whether that enforcement action – I think we got to the point we found that mediation notices were issued.

35 We did. We did. And I am jumping ahead a little bit, but I want to do this, because if ANZ thought it could get money out of the crops, why not take enforcement action in relation to the crop – under the crop mortgage, rather than the mortgage over the property? Because ANZ did not do that, did they?---No, they didn't. And, again, I can only look back and – and speculate as to what the reason might have been. And – and I assume that by that stage the crop had been sold and the proceeds had been banked outside of - - -

45 Well, you can't assume that, can you, Mr Steinberg? Is there any evidence of that in the documents?---Yes, I believe there is a – a document that outlines the receipts from the crop proceeds with a reference that we understand indicates that those proceeds were banked into a – another bank account. So – I think I have it exhibited

somewhere. I am not going to be able to pull it out for you, I'm afraid, but – but I have seen that document. So, again, this was not an easy conclusion that I came to, because we, you know, I spent some time trying to understand exactly what that document was concluding. Yes.

5

I want to put very squarely to you, Mr Steinberg, that the failure to accept the multiple offers that you describe in your statement as reasonable offers was conduct in breach of clause 2.2 of the Banking Code of Practice, which, as you will recall, required ANZ to act fairly and reasonably towards the Cheesmans in a consistent and ethical manner?---No, I don't agree with that.

10

You don't?---No.

If a similar case happened today, would ANZ handle it differently?---Yes, it would.

15

And how would ANZ handle it now?---Well, I believe we would show more empathy towards the customer. We would look to find a solution that would support some form of – of home retention.

20

So why didn't ANZ do those things in 2012?---Again, I wasn't involved in this particular matter, so it's – it's difficult for me to say exactly why. I've offered some background and some rationale, but - - -

25

But they were things that could have been done in 2012, weren't they? ANZ could have been more empathetic. ANZ could have tried to come up with a solution that would not involve the loss of the home?---We could have, yes.

30

And there was nothing preventing ANZ from doing that?---No, there was nothing preventing us, but, again, I just think it's fair that I reiterate the context in - - -

Yes?--- - - - which this happened. I do think that that's – you know, that needs to be considered in the – in the background. 2011 is a different year to 2018. So we have acknowledged that we do things differently today.

35

In September 2015, after these events, Arthur Cheesman got in touch with ANZ, didn't he?---Yes.

He had seen the 60 Minutes story about Mr Phillott?---That's right.

40

And he was still aggrieved about the way he had been treated by ANZ?---That's right.

And, following that, you and another person from ANZ met with Mr Cheesman?---Yes, that's right.

45

And what was discussed at that meeting?---Mr Cheesman, effectively, took us through his – his story, his experiences with Landmark, his experience with ANZ,

and he was asking the bank to review Landmark and its conduct to determine whether, you know, we thought that he had been fairly treated and whether he should be compensated.

5 And, by this time, ANZ had established a taskforce to review the files of former Landmark customers?---Yes, that's right.

And it referred the Cheesmans' file to the taskforce?---Yes, that's correct.

10 And in April of 2016, a memorandum was prepared in relation to that matter, which I will take you to, ANZ.800.716.3733?---Is that in my documents, Ms Orr?

No, it's not?---No. Okay.

15 It's not annexed to your statement, Mr Steinberg. Now, this is a memo relating to the taskforce – the taskforce's consideration of the Cheesmans' case. Is that right?---I would need to see a little bit more, but, looking at the date, it does look like that would be right, yes.

20 Yes. I'm sorry. It's difficult without some of the other pages?---Yes.

Can I ask that you be shown 3735. Do you see the heading there Taskforce Meeting Consideration?---Yes, I can.

25 And we see there:

*Taskforce meeting considered the review and customer claims on 15 March 2016. Determination was made to support the customer's monetary claim.*

30 ?---Yes.

Continuing:

35 *It was recognised that, whilst on legally sound grounds, on revision a more commercial and compassionate assessment would have enabled the customer a level of funds from the asset sales to enable a more positive movement forward. Rather, all principal and interest was cleared, unsecured creditors and statutory commitments paid in full, and the customer, that is, the elderly Arthur and Katrina, were left with nothing at all. Applying a current practice lens to*  
40 *the file management would undoubtedly have enabled the customer to avail of a level of funds to move forward. Agreed that –*

Certain people from the bank:

45 *...would visit the customer, along with their rural financial counsellor and legal representation, with a view to achieving a resolution within the \$390,000 financial parameters.*

5 What are the \$390,000 financial parameters that are referred to there, Mr Steinberg?---I'm relying on my memory here, Ms Orr, but what it's referring to is an upper limit that the taskforce suggested as a reasonable settlement limit, so that when the bank's representatives went out to meet with the Cheesmans they had a level of authority to agree to an arrangement, if one could be agreed.

So that was an upper limit set by the taskforce in relation to the Cheesmans in particular?---Yes. It's a guidance given by the taskforce, yes.

10 And, to your understanding, is that \$390,000 informed by what we see further up the page of quantifiable costs and unquantifiable costs in relation to the Cheesmans?---It appears that's the case, yes.

15 And the quantifiable costs included the forced sale of a home valued at \$325,000?---Yes.

20 Legal costs for \$11,600, out of pocket expenses in moving to Ballarat, and cost of renting a home to live in from then until present, \$52,500. So that informed the parameters for the discussion with the Cheesmans?---That's right.

25 Ultimately, how much did the bank agree to pay the Cheesmans?---I am just going to refer to my statement if I could. Are you able to help me find that in my statement, Ms Orr.

Perhaps if I take you first to the resolution meeting description on this same page. That might assist - - -?---Yes. Thank you.

30 - - - Mr Steinberg. We see there's a reference there to a meeting that was held with the Cheesmans in March 2016?---Yes.

And there's a summary of the discussions?---Yes.

It was explained that:

35 *ANZ had undertaken a thorough and extensive review of their case. It was the view of the bank that, having undertaken the extensive review, the bank's actions appeared legally reasonable, given the account conduct, monetary defaults, and time indulgence provided to seek a resolution. The loss of the family farm and home, whilst distressing for all, was an unavoidable result of*  
40 *the farm's financial failure. The bank did, however, recognise that greater scope should have been offered to accept the debt compromise offers proposed by the customer. In particular, the October 2012 offer to settle the remaining debt for .425 million and for .285 million that was declined by the bank may have avoided further erosion of circa \$140,000 in equity. It was proposed that*  
45 *this figure (rather than the \$390,000, based to a large degree on the sale of the home at 325,000) should form the basis of a settlement. Accordingly, the bank proposed a settlement figure of \$210,000, recognising the \$140,000 equity*

*aspect, together with a gesture of goodwill in offering coverage of the quantifiable cost aspects of legals (12,000), out of pockets (2000) and rental (52,000).*

5 And we see there that the customer countered this offer with one of \$250,000?---Yes.

And if we go over the page, discussion ensued, and then:

10 *In order to enable the former customer to make a clean start and avoid further financial strain, the ANZ offer was increased to 270,000 in full and final settlement.*

And that offer was accepted by the customer?---Yes, that's right.

15 So you had the ability within these parameters to offer \$390,000 to settle the position with the Cheesmans, bearing in mind that the forced sale of their home cost them 325,000, but you settled for 270,000?---Yes, that's right.

20 And you settled because the bank's conduct in relation to the Cheesmans fell short of what the community would have expected of ANZ?---Yes. That wasn't the terminology we used at the time, but I'm happy to accept that proposition.

Yes.

25 THE COMMISSIONER: Well, the expression that was used in this document was "more commercial and compassionate". I understand the compassionate limb. Explain to me why it was more commercial. I can think of a number of reasons. You tell me why it would have been more commercial to deal with them differently?---Can I just see that reference, please.

30

Yes. Go back a page in the document, under Taskforce Meeting Consideration, second bullet point, line 2?---Yes. Commissioner, my reading into that is that the people making the judgment back in 2012 should have been more commercial in the way that they assessed the offer. So the way that I read that is the property was worth, from recollection, \$390,000. The offer that was put to us at a particular point in time was \$300,000. The commercial analysis of that offer would start off with your 390, which you think the property is worth. You would then apply a discount, because you often don't achieve what you think a property is worth. You then pull out the costs that you would have to spend in order to achieve that. And then you would probably come up with an offer not far off maybe even less than the one that was put to us. So had we been more commercial in the way we analysed the offer in 40 2012, we should have accepted it.

Yes. Go on.

45

MS ORR: I tender that document, Commissioner.

THE COMMISSIONER: Memorandum 26 April 2016, Landmark Taskforce  
Consideration re Cheesmans, ANZ.800.716.3733, exhibit 4.17.

5 **EXHIBIT #4.17 MEMORANDUM, LANDMARK TASKFORCE  
CONSIDERATION RE CHEESMANS DATED 26/04/2016 (ANZ.800.716.3733)**

10 MS ORR: Those are the questions I have for you in relation to the Cheesmans, Mr  
Steinberg, unless the Commissioner has any further questions. I want to move on to  
another case that you've dealt with which relates to Gayle and Joseph Court. That's  
dealt with in annexure A to your second statement, Mr Steinberg.

15 THE COMMISSIONER: Which is the second statement?

MS ORR: The second statement is the statement annexing all the specific – or the  
first tranche of specific customers. It's Rubric 4-20, Commissioner.

20 THE COMMISSIONER: Four twenty. That's annexure A?

MS ORR: It is, Commissioner.

THE COMMISSIONER: Thank you.

25 MS ORR: Do you have that statement there, Mr Steinberg?---Yes, I do.

And the Courts owned a farming property in Queensland?---Yes.

30 And this is a case where you don't consider that ANZ engaged in any misconduct or  
conduct that fell below community standards and expectations?---Yes.

Is that right?---Yes, that's right.

35 But you do accept that there were things that ANZ could have done better in relation  
to the Courts?---Yes, I do.

And you accept that aspects of ANZs conduct may have caused the Courts frustration  
and disappointment?---Yes, I do.

40 And, for example, you say in paragraph 89 of your statement that, based on your  
review of the file, the Courts were provided with little or no notice of ANZs  
acquisition of the Landmark loan book before the acquisition date?---Yes, that's  
right.

45 And you acknowledged earlier that this could have been a failing on ANZs part in  
relation – I think you said that there was inadequate communication to many  
customers about the acquisition at that time?---That's right.

You also say in your statement that the Courts had a number of relationship managers over time?---Yes, I do.

5 So between March 2010, when ANZ acquired the Landmark loan book, and February 2017, when their file was closed, the Courts had six relationship managers. Is that right?---That sounds about right, yes.

10 And their file was managed at various times by a number of different departments?---That's right.

15 Given the seasonal nature of agriculture, do you accept that it's particularly important for banks to maintain continuity in their relationships with agribusiness customers?---I think that that is a – an ideal position to have. The reality, Ms Orr, is that in banking and in all other businesses, people do come and people go. People move into different roles, people leave the bank, resign. So I would accept that that is a preferable position to have. Unfortunately, it doesn't always work out that way.

20 Yes. So it's hard to build that continuity when you've got six relationship managers in six years, isn't it?---I think the important thing is that you're – you're still being managed by the same group of people, because, ultimately, there are teams involved in managing these files. But I accept that for a customer, having the continual change is unsettling.

25 And you've also acknowledged in your statement that contact with the Courts was not, in your words "always as frequent as would have been optimal".

?---Can you just take me to that - - -

30 That's 89(b) of your statement, Mr Steinberg?---Yes. Yes, that's right.

35 "Not always as frequent as would have been optimal." What would have been optimal in terms of frequency of contact between ANZ and the Courts?---I don't think I could prescribe a particular frequency. I think that the frequency of contact for any customer is determined by the individual circumstances that apply to that customer. But, just as I went through this particular file, you know, it occurred to me that there were times when there wasn't the amount of contact that they – they needed.

40 We know from documents ANZ has provided under notices to produce that in June 2015 there were some former Landmark customers who hadn't seen their relationship manager for more than two years. Have you seen those documents?---No, I'm not aware of them.

45 Could I – I'm happy to show you?---Yes, please.

ANZ.800.610.0479. Have you seen this document before, Mr Steinberg? June 2015 Discussion Document Lending Services Agribusiness?---Yes, I have.

And if we turn to the second page of that document, 0480, we see an analysis of lending services, commercial issues, agri-specific, and lending services agri-solutions. And we see from the heading that this is a comparison of old versus new?---Yes.

5

And do you see at the top there, the first entry is:

*Customer visitation/communication. The old structure showed a clear lack of customer visitation and communication. We are aware of instances where customers have not seen a bank manager for over two years.*

10

?---Yes, I see that.

Yes. And you accept that that was the case?---Yes, I do.

15

I tender that document, Commissioner.

THE COMMISSIONER: Lending Services Agribusiness Discussion Document, 1 June '15, ANZ.800.610.0479, exhibit 4.18.

20

**EXHIBIT #4.18 LENDING SERVICES AGRIBUSINESS DISCUSSION DOCUMENT DATED 01/06/2015 (ANZ.800.610.0479)**

25

MS ORR: Was that acceptable, Mr Steinberg, that customers had not seen a bank manager for over two years?---No.

Why is frequent contact with the bank manager important for farmers?---So farmers have got needs that are different from our general population of banking customers. They have an emotional and a generational connection to the land. They run enterprises that are impacted by a lot of variables that are outside their control. I think with those factors taken into account, they do need regular face-to-face contact.

30

And does ANZ now have systems in place to make sure that its relationship managers have frequent contact with ANZs agribusiness customers?---I would say we have guidelines and practices in place to ensure that that happens in my – in the lending services area that I work. And – and also on – on the frontline, but I'm not personally involved in those.

35

40

And in the area where you work, in the lending services area, do you know what those guidelines and practices suggest for an appropriate frequency of contact with farmers?---Again, there's no prescribed frequency. As a general rule, we would say that no customer should go six months without having a visit, but with many of our customers, it will happen more frequently than that.

45

That's when they're in the lending services area. Is that what you're saying?---That's right.

5 Not more than six months without a visit?---That's right. That's not to say that there wouldn't be any other form of contact - - -

No?--- - - - during that time.

10 No. I understand?---But, as I said, it really comes down to the individual circumstances of each individual customer.

15 And are you able to comment on what the guidance is for relationship managers – not in lending services, but for relationship managers with the frequency of their contact with farming customers?---The only comment I can make there is as an observer. I observe that they are a group of people that are constantly on the road travelling visiting their customers. So by that, I'm – I'm deducing that there is – that that is the big focus of their roles.

20 Another thing that you've noted in relation to the Courts is that there were instances where ANZ obtained a property valuation without obtaining quotes from different valuers. Do you recall that?---Yes, I do.

25 Is it now ANZs practice to obtain quotes from different valuers before appointing a valuer?---Yes, it is.

And why does ANZ do that?---We do it to ensure that the cost that's ultimately incurred is as competitive as it can be and also to give our customers some input into the selection of the valuer.

30 So ANZ now gives a customer input into the choice of a valuer?---In lending services we do, yes.

35 And why do you do that?---We do it to help improve our relationship with our customers, and so that they – so that there's a greater amount of transparency and clarity around the valuation process.

40 And when did ANZ introduce that policy?---So, let me just be clear, the – the change in policy that we have – and I'm struggling to remember a date, but it was some time in 2016. The policy change is the change that requires we provide a copy of all of our valuations, including the instructions to the valuer, to our customers. The matter I was referring to before, the selection, is a practice. It's from – as I sit here right now, I can't think of a policy that covers that, but it's – it's our practice to do that.

45 And how long has that been the practice?---I would say they came in concurrently at about the same time.

In 2016?---Yes.

So ANZ now provides its customers with copies of property valuations that are obtained for their property?---Yes, that's right.

And has done so since that policy change in 2016?---That's correct.

5

THE COMMISSIONER: And the instruction letter?---And the instruction letter, that's correct.

MS ORR: Now, I want to move on from the Courts to another case. And the case I want to talk to you about next relates to two customers whose names are the subject of a non-publication direction. So I won't refer to them by name, but they're dealt with in annexure B to your third – to your statement?---Sorry, Ms Orr, I've just got to grapple with some of the – is the other one annexure F? Is the second one annexure F?

10  
15

The one I am directing you to now is annexure B?---Yes, I've got that.

So you understand we won't refer to the name of these particular customers?---Yes.

20 But they own a farming property in Queensland?---That's correct.

Where they breed and sell cattle?---That's correct.

25 And this is another case where you don't consider that ANZ engaged in misconduct or conduct that fell below community standards and expectations?---Yes, that's correct.

30 But, again, you accept there were things that ANZ would do differently if the same situation arose today?---Yes, I do.

And as was the case with the Courts, you've accepted with these customers that ANZ didn't always communicate with the customers as frequently as it should have done?---Can I just remind myself - - -

35 That's paragraph 90?---Yes. Thank you. Yes. That's correct.

40 And, again, as with the – as we've just discussed in connection with the Courts, this is the case where there weren't quotes from different valuers before the valuer was appointed. You refer to that in paragraph 91?---Yes, I do.

45 And I want to put to you that, a bit like the Cheesmans' case, this particular case also highlights some failings in the way that ANZ dealt with customers in negotiations about their financial difficulties?---Can I ask you to be a bit more specific with that question, please.

Well, you've referred in your statement to an occasion in October 2011 when ANZ met with these customers to discuss their debt reduction options, but on the same day issued them with a default notice?---Yes. Can you tell me what paragraph that's in.

5 That's dealt with in paragraph 65 to 66 and 92?---Yes, that's right.

And you acknowledge in paragraph 92 that that wasn't consistent communication with the customer?---Yes, I do.

10 And you accept that it's important for a bank to engage consistently with its customers, particularly when those customers are in financial difficulty?---Yes, I do.

And you say that today ANZ wouldn't have inconsistent communications like this with a customer?---I would say I certainly hope so.

15

Now, do you accept that the conduct of meeting with these customers in October 2011 to discuss their debt reduction options and serving them with a default notice on the same day was conduct that breached clause 2.2 of the Code of Banking Practice, which required ANZ to act fairly and reasonably towards these customers in a consistent and ethical manner?---No, I don't.

20

So you accept that the communications from the bank were inconsistent. Your statement makes that clear?---Yes.

25 But you don't accept that the bank failed to act towards these customers in a consistent manner as required by clause 2.2 of the Code of Banking Practice?

DR COLLINS: With respect, Ms Orr ought to read the whole of clause 2.2, or at least put it on the screen so the witness can see it.

30

MS ORR: I'm happy to put it on the screen. I was attempting to isolate the part of clause 2.2 that I'm directing your attention to, Mr Steinberg. If we could have RCD.9999.0035.0006 on the screen. Do you see thee the obligation there, Mr Steinberg, to act fairly and reasonably towards the customer in a consistent and ethical manner?---Can you just take me to the clause again.

35

2.2.

40 THE COMMISSIONER: First word, line 2?---Yes. So my response, Ms Orr, is that I believe that in the case, where a customer is in default of its obligations, that it's fair and reasonable that the bank reserves its rights and issues a default notice. That default notice was after quite a detailed meeting that occurred with the – with the customers. And I'm – I'm very quickly trying to scan, myself, across this diary note,  
45 but there were a number of options that were discussed at this particular meeting. And ANZ representatives at that meeting expressed the seriousness of the position and indicated that this was the last roll of the dice. So to me that's indicating - - -

Mr Steinberg, can I just suggest to you you're trying to have the penny and the bun. You say in your statement there was not consistent communication and yet you say the bank acted consistently?---That's right. I mean, I – my concession in that document, Commissioner, was the inconsistency of seeing a customer on a particular day, not telling them you're issuing a default notice, assuming that that's how it happened, and then they leave and you issue the default notice. So I accept that that would be inconsistent. What I'm addressing is whether it's fair and reasonable to issue the default notice. I think in the circumstances where there's a default, in the circumstances where the bank has conveyed the seriousness of the position and indicated that this is the last roll of the dice, I would say in those circumstances it's fair and reasonable that the bank issues a default notice.

MS ORR: So you don't accept that the conduct breached clause 2.2 of the Code of Banking Practice?---No, I don't.

There was also an occasion in 2013 when ANZ's lawyers sent these customers a letter of demand that required them to give vacant possession of their property within one month from the date of the letter. You deal with that in paragraph 92 of your statement?---Yes.

And you acknowledge in your statement that that wasn't sufficient time to require vacant possession, and that if a similar notice was sent today, further time would be given?---Yes. I agree with that.

We saw in relation to the Cheesmans that the asset management agreement provided for them to give vacant possession to ANZ within seven days of ANZ making a demand. You recall that?---Yes.

And here we have ANZ requiring these customers to give vacant possession within a month. Are these sorts of timeframes acceptable timeframes, Mr Steinberg?---So I think every case has to be dealt with individually based on the – on the circumstances of the case. I have acknowledged that, in the one that I'm looking at, that 30 days I didn't feel was enough time. And, as a general rule, I would say that we would try and take the relevant factors into account in determining what the right period of time is.

Well, what does ANZ now consider is an appropriate time to allow a customer where the bank requires vacant possession of their property? I'm talking about farming customers. What's an appropriate time to require them to give vacant possession?---So we don't have a specific policy or guideline that – that I can think of now that would inform me of that.

No policy or guideline, did you say?---None that I can think of right now. But, again, I think that that particular fact needs to be considered in the context of everything else that went on with the – with this particular customer's matter. And, as you go through it, you will see that there are a number of negotiations and a number of offers. There are deeds that are prepared and negotiated which – which

aren't executed. So this file records a history of a long negotiation with a customer. And I accept it culminated with the legal notice and the 30 days, but there was a lot of things that happened leading up to that.

5 Well, what does ANZ say to its lawyers today about its position on how long is acceptable to require a customer to deliver up vacant possession, bearing in mind that it's often the lawyers communicating that position?---Well, we would now – in my area, lending services, we would apply the – the lens that we have been applying since the establishment of the agricultural team, and would inform ourselves as to  
10 what a reasonable period is for that particular customer in those particular circumstances.

Has the way that ANZ uses lawyers in matters where a customer's in financial difficulty changed?---Yes, it has.

15 How has it changed?---We historically had a tendency to defer a lot of our matters to lawyers. And, again, since the establishment of the agricultural team, the practice of our team is to – to not do that.

20 And when was that change made?---Well, that change came in with – almost simultaneously with the commencement of the agricultural team in August 2014. So it was a change in behaviour and a change in practice in respect of the utilisation of lawyers.

25 Thank you.

THE COMMISSIONER: You referred, Mr Steinberg, to the fact this file had a long history. Does the fact that it had a long history suggest that there might be even greater reason to act consistently and reasonably?---Yes. I agree, Commissioner, that  
30 if you're working with a customer over a long period of time, that you should – you should demonstrate consistency in the way you deal with those customers.

It was a difficult file, you say, wouldn't you?---Yes.

35 Isn't that a further reason to be consistent and reasonable?---Yes is my answer. I would like to think that we're behaving in that way regardless of the length, but I agree with your proposition.

40 Ms Orr, how are we travelling?

MS ORR: I think it's an appropriate time for a break now, Commissioner, but I should let you know, Commissioner, that we are taking quite some time. We are running a bit behind. And I should also alert you, Commissioner, to the fact that at  
45 least one other party has informed me that they are considering their position on whether or not they will seek leave to cross-examine Mr Steinberg once I am finished.

THE COMMISSIONER: All right. Well, it's important we do it properly. All right. 2 pm.

MS ORR: Thank you, Commissioner

5

MR KATTER: Commissioner, can I just ask - - -

THE COMMISSIONER: Just a moment. Yes, Mr Katter.

10 MR KATTER: I wonder if I could ask are we going to address why these things happen and what we could do about it to improve it in the future? Is the Commission going to address those issues or - - -

15 THE COMMISSIONER: Mr Katter, I've indicated the course I will follow. At the moment we're hearing the evidence of particular cases. I've said - - -

MR KATTER: Commissioner, we're not being critical in any way.

20 THE COMMISSIONER: I understand that, Mr Katter. But I think all I will say to you is that we're looking at these things at the moment through the lens of particular case studies. And there's a deal of work that goes on behind the scenes before, during and after. And, ultimately, the fruits of that work are going to have to appear in my report, and that's the way I'm going to have to deal with it. Now, I understand your concern. You're not the only one who is concerned, Mr Katter. There is a lot of people out there concerned, and I know that.

25

MR KATTER: We appreciate your comments, Commissioner.

THE COMMISSIONER: Thank you. 2 pm.

30

**ADJOURNED**

**[1.02 pm]**

35

**RESUMED**

**[2.00 pm]**

THE COMMISSIONER: Just before we begin, Ms Orr, I want to say something about the conduct of the hearings and the topics that we're going to be able to address in the course of this particular hearing block. I've spoken with Counsel Assisting about the timetable for the rest of this week and looking forward into next. And they tell me that developments over the last day and a half mean that some of the farm finance case studies that we've selected and will continue to pursue will take longer than had been anticipated at the time that the plans were set.

45

We've continued to receive information about the case studies in relation to farm financing, both in the form of supplementary statements and further production under

notices to produce. That's why, as a consequence, some of those studies are going to take longer than we had first anticipated. It's important that they're done and they're done properly.

5 So given all that, I've decided, and counsel agree, that the best way for us to proceed is for the natural disaster insurance case studies that were to be heard in the latter part of this week, spilling over into Darwin in the early part of next, to move those to a later hearing block. And that will, I think, give us enough time for the case studies – the farm finance case studies that are scheduled to be dealt with properly. And, as I  
10 say, it is, of course, very important that they are.

I recognise that the change will cause inconvenience, considerable inconvenience to the consumers, to the experts, to the entities that we had told that their natural disaster-related case studies would be heard this week or next. So I'm sorry for that  
15 inconvenience. It's certainly not something we've done deliberately. I regret to say it's in the nature of all court and court-like proceedings that matters sometimes arise that cause changes to even what we hoped were the best laid plans. And it's, perhaps, all the more so in the case of a public inquiry with broad terms of reference and a lot of participants.

20 Now, it's all very well to say that we're not going to do that this week and next. When are we going to do it? It's no good just saying we're going to shift natural disaster insurance out of this week. When are we going to do it? Well, I propose that we should deal with those cases in the sixth block of hearings, which will take  
25 place in Melbourne in September. And it's likely, I think, as best we can judge at the moment, that that sixth block will consider conduct of insurance companies, general and life, and their intermediaries, in some respects, as well, also, as the natural disaster case studies that had been planned for this block.

30 And other topics – or the topics of those hearings will be announced in the ordinary way. But we are not putting them off into the never-never. We're going shift them off to the sixth block in September in Melbourne. Now, it's my hope that in re-ordering the work in that way, it means that we can – that it will ensure that neither the farming work we're now looking at, nor the natural disaster work that we've got  
35 to look at into the future, needs to be in any way compressed by timetabling difficulties or pressures. Now, with the removal of natural disaster from this block, Ms Orr, what's the anticipation about farming?

MS ORR: We hope, Commissioner, to finish most of the farming case studies this  
40 week. We think that one of the case studies may spill over into next week. And the bulk of next week will be filled with the cases relating to the third topic that we were dealing with in these modules, relating to interactions between financial services entities and Aboriginal and Torres Strait Islander people.

45 THE COMMISSIONER: Yes. Okay. Well, we will proceed in that way. I have had to make the call, perhaps earlier than I would have liked to have made it. It's always very tempting in these things. Perhaps we've heard some evidence about

5 this. It's tempting in these circumstances to wait and see what turns up. But, rather than have people getting on aeroplanes, coming here and finding that they're not going to be heard, it's better that I pull the pin now and shift natural disaster over into September, give us enough time to deal properly with the farming issues. Now, Ms Orr, anything that arises out of that or needs to be added to that?

10 MS ORR: No, just to say, Commissioner, that my team of Counsel Assisting and the solicitors instructing us appreciate the additional time. We feel that both topics, farm finance and natural disaster insurance, are important topics that involve multiple consumers and very detailed stories. And we are concerned to ensure that each of those stories is properly explained.

THE COMMISSIONER: Yes. Thanks. Yes.

15 MS ORR: Now, Mr Steinberg, I had been asking you some questions about the customers that you dealt with in annexure B to your statement. You're still in that - - -?---Is that the one we were finishing on just before?

20 Yes. I had some further questions about those customers. Do you recall these were customers whose identities are the subject of a non-publication direction?---Yes, I do.

Do you have annexure B?---Yes, I do.

25 Right. Now, we had finished by discussing the position that ANZ has these days in terms of instructing lawyers to assist it in enforcement action. I want to take you to another occasion in relation to these particular customers in January 2012 when the customers made an offer to ANZ to settle their indebtedness, and ANZ didn't accept that offer?---Yes.

30 Yes. And you say in your statement that – and I want to be – I'm carefully going to quote you here, because I'm going to ask you to explain this further. You say that while that decision was not inappropriate at the time, with the benefit of hindsight it is possible to say that the offer should have been accepted, subject to the conclusion of acceptable terms?---Yes, can you just point me to that paragraph number, please.

35 Yes. I'm sorry. It's 93 in your statement - - -?---Yes.

40 - - - Mr Steinberg. Now, I want to understand what you mean by that statement:

*The decision was not inappropriate at the time and, with the benefit of hindsight, it's possible to say that the offer should have been accepted.*

45 I want to understand whether your position is that the offer ought to have been accepted by ANZ or ought not?---Okay. So could I maybe take that in two parts, please. So, in terms of why I don't think it was inappropriate, this offer in 2012 to settle for the amount of – and may I say the amount?

Yes, you can?---Yes. For the amount of \$2 million, to be financed by the National Australia Bank – came to the bank after a long series of negotiations and offers that were put by the customer to ANZ over quite a period of time. If I look through my statement, we had the – the October compromise, the November offer, the 17  
5 November offer. And each one of those offers were a reduction in the offer below that. And, having accepted the offer before this, which was the 17 November offer, deeds were prepared in order to bring that particular offer into effect. And those deeds weren't executed, because this new offer was then put to us, which was a further reduction. So when I say in paragraph 93 that I don't believe it was,  
10 inappropriate, in those circumstances where the offer had been continually reduced and where the – the offer of \$2 million was quite a significant reduction on the debt that was due, I find that – well, in my words, not to be inappropriate. Coming to the second part of the question, Ms Orr, the reason I think that – or the reason that I say that, with the benefit of hindsight, it's possible this should have been accepted, the  
15 reason I made that observation is that ultimately we accepted an offer of – and I'm just looking, but it was less than that one point – 1.1 or \$1.2 million was the offer that we ultimately accepted - - -

20 Yes?--- - - - back in 2014.

Yes?---So, with the benefit of hindsight and with the benefit of knowing that, it would have been better if we would have accepted the \$2 million offer two years earlier.

25 If the offer should have been accepted, doesn't this case involve a failure by ANZ to accept a reasonable settlement offer like the Cheesmans?---No, I think – I think it's different. As I say, I think each one of these needs to be looked at individually. I look at the unique circumstances that apply to each individual matter that I work on or that I assess. And each individual matter takes on its own, you know, personality  
30 and its own set of facts and circumstances. And I – I don't believe that this is the same as the Cheesmans. It's a different arrangement, as far as I interpret it and see it.

So the offer was to pay \$2 million?---That's right. In 2012.

35 That's right?---Yes.

The offer we're discussing?---That's right.

40 And if we go to exhibit 50 to your statement, ANZ.030.001.0294?---Was that number 50?

50. Yes, five zero. We see there a diary note dated 30 January 2012 that appears to have been prepared after the settlement offer of \$2 million was received?---Yes.

45 And on the second page, 0295, we see a schedule setting out the securities for the loan?---Yes.

And we see that the – it has been redacted but you can disregard the redactions. Your version doesn't have them. We see that the total market value of the securities was \$2 million?---Yes.

5 And that the ERV, referred to down the bottom of the page, the estimated recovery value, was \$1.6 million?---Yes.

And this is because the bank thought that it was most appropriate to have regard to the worst case ERV. Do you see that at the bottom of the page? The 80 per cent is  
10 the worst case estimated - - -?---Yes.

- - - recovery value?---Yes. That applies to the table in the middle of the page entitled Provision Assessment.

15 Yes?---Yes. That's right.

So at the time this decision was made to reject this offer, the most that the bank thought it could expect to recover through enforcement action was \$1.6  
20 million?---That is one way of looking at it. I think there are other ways of looking at it. So the questions that I would ask would be what other security does the bank hold. So in this case, there was a stock mortgage and we were holding a security over – over the livestock. And, from recollection – again, can I say specifically what the stock was, because that might – it was part of the livestock stock – included livestock and other stock - - -

25 Yes?--- - - - that wasn't actually livestock.

Yes?---That could have had a value. And I don't think you can necessarily just have a look at the estimated realisable values of the freehold security as the only input in  
30 determining what your decision or recommendation might be.

Well, what I want to put to you is that when the estimated realisable value is 1.6 million and the customer has put to you an offer of \$2 million - - -?---Yes.

35 - - - it's unreasonable to reject that offer?---I'm sorry, I didn't explain myself completely before. You will see that in that particular table we have the stock mortgage and the bill of sale over the stock.

40 Yes?---But we have a zero net realisable value.

Yes. You and I can see that. Unfortunately, others can't?---Okay.

But it's – item D in the security schedule is the stock mortgage?---That's right. Now, the reason that has that particular value there is driven by the bank's policies around  
45 how we can extend that particular type of stock. But it doesn't take away from the fact that there is this particular stock there and it does have value. What this table is saying is that when we value that collateral for security indicator purposes, we are

not able to take the value of that particular collateral into account. Part of that is driven by our prudential requirements, but there would – there was, in this particular enterprise, potentially, considerable value not only in the livestock but in the intangible stock that stood alongside it.

5

I understand. So you say the total estimated realisable value is in excess of 1.6 million, the figure in this document?---I'm saying that's a possibility, yes.

10 Right. Possibility because we don't know the value of the stock mortgage. It wasn't assigned a value?---It's not assigned a value, but you can get a picture, if you like, of what it might be worth by looking at the accounts for this particular enterprise. And this particular enterprise – again, I don't recall the numbers, but there are some material numbers around the stock and the particular type of stock that it is.

15 So, in refusing this \$2 million offer, did ANZ explain the reasons it was being refused or invite further negotiations with these farmers?---I'm not sure I can recall that, Ms Orr. Are you able to take me to any documents to help me remember.

20 Yes. Your statement, paragraph 93?---So 93 talks about the offer. Your question was whether we communicated that and how we did?

Yes. The last paragraph of – sorry – the last sentence of your paragraph 93 reads:

*In addition - - -*

25

Continuing:

*...in refusing the January offer, it appears ANZ did not explain the reasons for its refusal or invite further negotiations.*

30

?---Yes, that's right.

And if we turn to exhibit 51 of your statement, which is ANZ.030.003.0135 - - -?---Yes.

35

- - - we see the communication with the customers. Your offer of 25 January 2012 of 2 million as full and final settlement?---Yes.

Continuing

40

*We advise that your offer above is not acceptable.*

?---Yes.

45 That's what the customers were told?---Yes.

They weren't given any explanation of why it wasn't acceptable, nor were they invited to further negotiate with ANZ?---Yes.

5 Is that something you regard as acceptable?---I think it would have been better to have provided some explanation. I wasn't involved in this deal at the time, and I wasn't involved in preparing this letter. So I can't say what the – the actual circumstances were that led to this type of communication. But I would, you know – personally, I would prefer to see a little bit of an explanation.

10 Is it now ANZs position that when it refuses a settlement offer it seeks to engage customers in further negotiations?---Yes.

15 And how does it do that?---Well, our – one of our preferred ways of doing that is by offering farm debt mediation. But even in instances where farm debt mediation is not appropriate in a particular circumstance, we would reach out to our customer, have a – have a meeting with them and try and understand what further discussions can occur.

20 Do you think the community expects that when you decline a settlement offer such as the one made by these customers you would explain why you were doing that and indicate that you were open to further discussions?---Look, I – my response to that, Ms Orr, is that we need to consider this in the context of everything that has happened on this file. So there has been a lot of negotiation by ANZ on this particular matter. There has been a lot of meetings and a lot of compromise reached relative to the value of the debt. I think that it is appropriate that in the particular circumstances, as I said in my paragraph 93, that it was not unreasonable that we didn't accept that offer. And what we've done here is we've communicated the non-acceptance of that to the customer. Whilst I prefer to see it done slightly differently, I believe – I think it's reasonable in the circumstances. I think it's reasonable.

30 THE COMMISSIONER: Can I go to the commercial sense of the rejection, not by reference to the document on the screen, but by reference to the immediately preceding document we had up?---Yes.

35 The reference to which is, Ms Orr?

MS ORR: ANZ.030.001.0294.

40 THE WITNESS: Was that my number 50?

MS ORR: Exhibit 50?---Yes. Thank you.

And I had taken you, I think, to 0295 within that document.

45 THE COMMISSIONER: I just direct your attention to the block Provision Assessment?---Yes.

Date last calculated, provision held, FMV.

Stands for what?---Fair market value.

5 Of the realty?---Yes.

Fair market value of the realty was 2 million, the offer was 2 million?---Yes.

10 What was the commercial reasoning which would underpin rejection of an offer from the customer to pay the fair market value – not the realisable value, but the fair market value of the real property that the bank held under mortgage?---So, looking back at this, Commissioner, and trying to put myself in the shoes of the people who made that decision, I would say they would be looking at the value of the – the livestock, and the other stock that accompanied the livestock. Am I able to say, Ms  
15 Orr, what that is or does that give away too much information on this file?

MS ORR: I think you should treat this page as having no redactions in the first table or the second table – I’m sorry – in the first table there are names?---Okay.

20 Other than that, no redactions?---So, Commissioner, in this particular case there were stocks of semen – of bull semen. And according to the balance sheet - - -

25 THE COMMISSIONER: I thought that was it. Yes. Go on?---And according to the balance sheet, Commissioner, that – the livestock and the semen stock were of value.

Yes. Well, again, just come to the commercial reasoning, because – can I tell you where I’m going, so that you see where the argument is going. Step 1 is why is it commercially sensible to say no? Let it be assumed that you get to an answer which  
30 says yes, it’s commercially sensible to say no, because livestock and stock of semen is such that there is more to realise. Why not go back to the client and say, “Look, yes, you’re offering us 2 mil, but we’ve got security interests over more than the land and you’ve got very valuable assets there.” Either you go back with a number or you don’t go back with a number. It’s a question of negotiating technique. But go back  
35 to the client and say, “You’ve given us a figure that represents the land, but we hold more than that. What are you going to do about that?” It’s this notion of communicating to the client, rather than just saying, “We’ve had a long history of discussions. The answer is no”?---Yes, Commissioner. I accept that that that would have been the preferred way to handle it. It’s very difficult for me to put myself in  
40 the shoes of these people when they were negotiating the deal, but all sorts of other factors potentially come in as to whether they felt that in this particular case that the customer may not have been dealing, in their opinion, fairly with – with them.

45 Be it so. Be it – let’s assume that the banker holds the deepest darkest suspicions - - -?---Yes.

- 5        - - - about the customer. They may be well founded, they may be ill founded. But assume them to hold the suspicions. What do you lose by saying to the customer, “Look, what you’ve offered us is land value. We hold other security. What are you going to do about that?” How is the customer going to misuse that or twist that or work to the bank’s disadvantage if the bank simply says that to them?---I agree, Commissioner. I don’t see that there’s a lot for the bank to lose by going back to the customer and saying look, we don’t accept the offer, but, you know, whatever the but is.
- 10        Accept the offer because?---Yes.
- It’s the “because” which is - - -?---Yes.
- 15        - - - often enough, I think, the thing that – it either persuades the customer to change or it doesn’t, but at least put your card on the table?---Yes, I accept that.
- Yes. Go on, Ms Orr.
- 20        MS ORR: Those are the questions I wanted to ask you about this particular - - -?---Okay.
- - - set of customers, Mr Steinberg. I would like to move to some questions dealing with your annexure E?---E.
- 25        Annexure E of your statement - - -?---Is that a named one?
- Yes, relates to Dimity and Michael Hirst?---Okay. Thank you.
- 30        Now, Mr and Mrs Hirst were farmers in northern Tasmania?---Yes, that’s right.
- And they bred cattle and lambs?---Yes.
- 35        And from 2006 they began investing in the forestry industry in Tasmania?---That’s right.
- And in your statement you’ve accepted that ANZs conduct in relation to the Hirsts fell below community standards and expectations?---That’s right.
- 40        And you say that this was attributable to a number of aspects of ANZs conduct in relation to the Hirsts between 2011 and 2013?---Yes, that’s right.
- And one of the matters that you’ve referred to in your statement is that ANZ did not engage in farm debt mediation in relation to this case?---Yes, that’s right.
- 45        A farm debt mediation was not compulsory in Tasmania at the time?---No, it wasn’t.

But you now accept that ANZ should have engaged in farm debt mediation with the Hirsts at an early stage and certainly before they entered into a deed of settlement and release with ANZ?---Yes, I do.

5 Why is that?---Because I found that mediation would have provided a better forum for the bank and our – and the Hirsts to reach an amicable and fair arrangement.

In your view, what benefits can flow from early farm debt mediation?---So as a general proposition, I would put to you that the earlier we deal with companies that are facing financial difficulty, the greater the remedial options are. The later we wait and the – the deeper the problems become, so too then do the options available narrow.

10 Is it now ANZs policy to conduct farm debt mediations in relation to all agricultural lending files prior to any enforcement steps being taken?---Yes.

15 And how long has that been ANZs policy?---Ms Orr, you're testing me on the timing, but it would be 2016 or 2017. I'm sorry. I'm just not able to pin a date on it.

20 Now, I've mentioned the deed of settlement and release that ANZ entered into with the Hirsts. You acknowledge that that deed provided ANZ with substantial enforcement rights. That's 116 of your statement - - -?---Yes.

- - - Mr Steinberg. Is that correct?---Yes, that's correct.

25 And in that sense, it was similar to the asset management agreement that we saw ANZ had entered into with the Cheesmans?---So, again, I struggle with the comparisons, Ms Orr, because I look at each one individually. When I read the deed of settlement in relation to the Hirsts' matter, I found – I found that it was a – the obligations on the Hirsts were difficult.

30 Difficult in what sense, Mr Steinberg?---Well, they were tough. They were tough.

35 Yes. You tell us in your statement that it provided for the sale of all secured assets by ANZ, the release of all claims by the Hirsts against ANZ, and an agreement by the Hirsts to default judgment in favour of ANZ for the balance of the debt?---Yes.

You say that was tough on the Hirsts?---Yes.

40 Would ANZ consider it appropriate to enter into a deed with terms like that today?---Look, today we – we would look at entering into an arrangement that had a little bit more flexibility. But, again, Ms Orr, it does come down to the personal – the individual circumstances of the case. But as a – as a general rule, can I say that we do apply a different lens. Again, if I could use the word showing empathy

45 towards our customer, and with a general aim, where possible, for home retention.

You tell us in your statement that agreements reached with customers today ordinarily involve a greater degree of compromise by the bank than we see in your agreement with the Hirsts?---Yes.

5 There was insufficient compromise by the bank in its dealings with the Hirsts, wasn't there?---Yes.

10 THE COMMISSIONER: Was there any?---Commissioner, the forbearance from enforcement. But I'm not – I'm not justifying that that was sufficient, but I – that was one forbearance or compromise that the bank made.

Well, sale of all securities, blanket releases, default judgment for the balance. The compromise is not immediately apparent to me?---Yes.

15 Just to be sure of it, what did the bank give up?---So I think the – the main right that the bank gave up was to enforce its securities at that time.

Yes.

20 MS ORR: Delay. Delay in enforcing?---A delay. That's right.

Another matter that you've mentioned in relation to the Hirsts is that ANZ increased the interest rates on the Hirsts' facilities at a time when they were known by ANZ to be under financial stress?---Yes.

25 And you acknowledge that, while the interest rate increase reflected the bank's increased cost of capital, it placed an additional financial burden on the Hirsts at a time when they were under financial stress?---Yes.

30 Would ANZ do that today?---No.

What would it do in that situation today?---So in – in many cases that we deal with in lending services, we either leave the pricing unchanged or, in some cases, we are now reducing the pricing.

35 In what circumstances are you reducing the pricing?---Generally, in circumstances where the customer is unable to afford the pricing that's currently on offer and to try and make the pricing more affordable, if possible.

40 You refer in your statement to the fact that ANZ obtained valuations of the Hirsts' properties, but didn't give them to the Hirsts?---Yes.

45 And you've already acknowledged that – in your statement that if valuations had been obtained and given to the Hirsts, it might have been possible to facilitate what you describe as a frank, early discussion with the Hirsts about the possibility of an asset realisation strategy being adopted?---Yes.

And could an ANZ customer facing a similar situation to the Hirsts today expect to be provided with a copy of those valuations?---Yes.

5 And you've also mentioned in your statement that the Hirsts' case was the subject of an independent evaluation conducted by the Honourable Susan Crennan, a former High Court judge?---Yes.

And you've annexed a copy of that evaluation to your statement?---Yes.

10 And, as a result of recommendations made in that evaluation, ANZ paid the Hirsts an amount of money?---Yes, that's right.

How much did ANZ pay to the Hirsts?---It was \$500,000, plus interest, which brought the total to \$684,000.

15 And have the cases of other former Landmark customers also been the subject of independent evaluations?---No.

20 Why not?---So the Hirsts was the first time that we had utilised this as a mechanism for dispute resolution. What we found, Ms Orr, is that it took a long time. It took well over 12 months to resolve. And the view that we formed, having gone through it, is that we could achieve a quicker outcome through a farm debt mediation that would hopefully come with less emotional stress for our customer.

25 And why did ANZ choose to do an independent evaluation with the Hirsts?---The reason was that the Hirsts were actually being managed by our customer advocates office. And we had made an offer to – an offer of compromise to the Hirsts by – initially by forgiving the balance of the debt that was due to the bank of approximately \$4.8 million. And the Hirsts were not happy with that offer. And so  
30 my understanding is that, through discussions with our customer advocate, the idea was floated of using a retired – you know, an eminent person to conduct an evaluation. And that's how it came about.

35 In an earlier version of your first statement, the statement that dealt with the acquisition generally and contained the tables of acknowledged conduct falling below community standards and expectations, in an earlier version prior to the final version, you accepted that ANZ had breached clause 2.2 of the Code of Banking Practice in relation to the Hirsts?---Yes, that's right.

40 That being the provision with the obligation to act fairly and reasonably towards a customer in a consistent and ethical manner?---Yes.

45 You also described ANZs conduct in that earlier version of your statement as conduct that involved encouraging and granting increased loans to the Hirsts when the bank had not also informed the Hirsts that it disapproved of their property investment model or obtained updated valuations. Do you recall that?---Yes. Can you remind me, is that in my – in my original four - - -

4-01?--- - - - one statement? Yes.

Do you recall that?---Yes.

5 And was that the conduct – the conduct I’ve just described to you of encouraging and granting increased loans, not telling the Hirsts that you disapproved of their property investment model, and not obtaining updated valuations, was that the conduct that you initially regarded as being in breach of clause 2.2 of the Code of Banking Practice?---It was the cumulative effect of all of those.

10 So the cumulative effect of those things was that ANZ had not acted fairly and reasonably towards the Hirsts in a consistent and ethical manner?---Yes.

15 That’s the view you formed?---Yes. It – yes, that’s the view I formed. And can I – can I, again, just add a little bit more to that. It was informed, for my part, in any event, rightly or wrongly, by the determination by Ms Crennan.

20 So that was the view you formed at that time. But in the final version of the statement you provided to the Commission, you’ve resiled from that position. You’ve removed the Hirsts from the table containing customers for whom you acknowledge there was a breach of the Code of Banking Practice and you’ve moved them across into your table about conduct that fell below community standards and expectations?---Yes.

25 Why did you do that?---So I had a further look at Ms Crennan’s evaluation. And, on reflection, when I had a more detailed look at her evaluation, I found that there were parts of her findings that I didn’t agree with. We have accepted the outcome and the recommendations, but there were some of the findings that I didn’t agree with, with respect, of course.

30 So now you see the conduct as falling into a less serious category, if I can put it that way, of being conduct that falls below community standards and expectations, but doesn’t breach the Code of Banking Practice?---Yes.

35 And what is the conduct that you now regard as falling below community standards and expectations?---So it’s – it’s a cumulative effect of a number of issues: firstly, the farm debt mediation issue which you’ve already raised; second of all, Ms Crennan, in her evaluation, describes a particular meeting that was held with the Hirsts and their new relationship manager in approximately August 2011, and based on the description of that particular meeting. So that was the second input. The fact that we had increased the interest rates, which is, as I have said earlier, something we wouldn’t do today. The fact that we didn’t provide the valuations to the Hirsts. So the cumulative effect of all of those matters led me to the conclusion that we had breached community standards and expectations.

45 And what about the conduct you described in the earlier version of the statement as encouraging and granting increased loans to the Hirsts without telling them that ANZ

disapproved of their property investment model? Was that part of your consideration?---Yes, it was. Yes.

5 Part of the conduct that you say fell below community standards and expectations?---Yes.

Thank you. Could I turn to another of the sets of customers that you have dealt with in your statements, Mr Steinberg, the Harleys, which are dealt with in annexure D to your statement. So this annexure to your statement relates to Stephen and Janine  
10 Harley and their company Warrak McAlinden Proprietary Limited?---Yes, it does.

And the Harleys ran a sheep farm in Western Australia?---Yes, they did.

15 And their farm was on a property that you've referred to in your statement as the McAlinden property?---Yes.

And that was around 230 kilometres south of Perth?---Yes, that's right.

20 And, by 2013, the farm had been operating on that property for over 100 years for three generations?---Well, can you help me with that one, Ms Orr. Did I make that comment in my statement?

No. It's in one of the documents annexed to your statement, Mr Steinberg?---Yes.

25 Exhibit 11?---Thank you. I'm sure – I'm sure that's right, but - - -

If you would like to look at it, it's ANZ.800.644.0219?---Is this the diary note dated 14 February?

30 Yes, it is?---Can you take me to a line or - - -

I'm sorry. It's the next page into that exhibit, I'm sorry?---That's all right.

35 Again, with this statement you have multiple documents behind tabs. It's the one after that, which is the email from Rod Grieve, dated April 2013. Do you see number 1:

*Business operating in current location for 107 years. Currently two families living on the property.*

40 ?---Yes. On that basis, I accept that that's – yes.

Thank you. So the Harleys also lived on the property?---Yes.

45 And in 2013 there were two families living on the property. Is that right?---I wasn't aware of that.

Okay. That's in the same document. We will bring it up on the screen to help others. ANZ.800.678.5198?---And can you take me to a line or a - - -

The second point in the email?---Yes.

5

Continuing:

*Currently two families living on the property.*

10 ?---Yes. Sorry. There was a lot of detail in all of these. I can't remember it all.

Yes, there certainly is, Mr Steinberg. Now, the McAlinden property was made up of a number of different parcels of land?---Yes, that's right.

15 And in 2010, we see from the documents you've given us, that there were six parcels of land?---Can you take me to that part of my - yes. One, two, three - - -

Yes. If we look at the table in your statement at paragraph 64?---Yes. Okay. So we will need to break that up, but I accept that it's probably six, yes.

20

Yes. And in February 2013, one of those six parcels was subdivided into four different parcels?---Yes, that's right.

So there were a total, then, of nine parcels of land?---Yes, that's right.

25

And how many of those parcels of land do the Harleys own now?---I don't believe they own any of them.

They own none?---Yes.

30

Yes. And the Harleys, do they still live on the property?---I don't know where they live.

35 Now, in your statement you say that you've considered ANZs conduct in relation to the Harleys and, in your view, ANZ did not engage in misconduct or conduct falling below community standards and expectations in its dealings with the Harleys. That's your position?---Yes, it is.

But you've accepted that there were some aspects of ANZs management of its relationship with the Harleys that ANZ could have handled better?---Yes.

40

We will come to those. But, again, I want to understand some of the decisions that ANZ made in relation to the Harleys by going back to the acquisition of their loan from Landmark in 2010?---Yes.

45

You tell us in your statement that they had been clients of Landmark since around March 2004?---That's right.

And at the time ANZ acquired the Landmark loan book, the Harleys had a term loan facility in the amount of 2.05 million?---That's correct.

And they had an overdraft of 450,000?---Yes, that's right.

5

Now, at the time of the acquisition, the Harleys were already under financial pressure?---Yes, that's right.

You tell us in your statement that they had had consecutive trading losses for about five years?---That's right.

10

And they recognise that they would need to sell some of their land in order to improve their financial position?---Yes.

And at the time of the acquisition, the Harleys were taking steps to subdivide one of the parcels?---That's right.

15

And did ANZ identify before the acquisition that the Harleys were under financial pressure?---I'm not sure I've seen anything that indicated that, so I don't know the answer. Is there anything in my – no. Look, I know that there was five years of consecutive losses. So, clearly, they were having financial difficulties pre the acquisition. What I can't say is at the point at which ANZ became aware of that, whether that was during the due diligence or whether it was post the acquisition. I just don't know.

20

25

Do you know if ANZ met with the Harleys to discuss the acquisition and to tell them about the sort of steps that ANZ would take if their financial difficulties continued?---The earliest I can pick up, Ms Orr, is when the file was transferred to lending services in July 2011.

30

So does that mean, Mr Steinberg, that you don't know if ANZ met with the Harleys to talk these things through with them, given their financial position when the acquisition occurred?---Yes. I don't – I don't know.

You haven't seen anything to suggest that they did?---I might have. I'm just not able to recall it right now.

35

So ANZ takes the Harleys on as customers in March 2010 as part of the acquisition. And within about six months, in September of that year, ANZ is considering the transfer of their file across to lending services. You tell us that in paragraph 13 of your statement?---Yes, that's right.

40

And the file wasn't transferred at that time. In April 2011, ANZ prepared a credit memorandum in relation to the Harleys?---In April 2011?

45

Yes?---Can you take me to the section in my statement for it.

I will take you to the document, which is the credit memorandum, Mr Steinberg, which is behind your exhibit 51, the second document, ANZ.023.005.0105?---Is that dated 29 April?

5 Yes, it is. And do you see from the final document – final page of that document that this was prepared by the Harleys’ relationship manager at ANZ, Ms Masten – I assume Ms – Kym Masten?---Yes, that’s right.

10 Yes. And we see at 0114, a couple of pages from the back, under the heading Management Profile - - -?---Yes.

- - - that the credit memorandum recorded that the Harleys had an excessively high debt load accumulated from continual losses?---Yes.

15 We see, also, on that page – next paragraph down – that their property had subdivision approval to enable the sell-off of 400 hectares in four parcels, but the view is expressed that the prices were pitched at the top end of the market, and after 12 months there had been limited inquiry?---Yes.

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

And on the following page, 0115, under Conclusions and Recommendations, we see that the relationship recommended that the bank:

25 *Agree to a request from the Harleys for further support for 12 months.*

Do you see that?---Which paragraph under Conclusions and Recommendations?

The fourth paragraph down, read with the fifth paragraph?---Yes.

30

Do you see the request, and then the recommendation to accept the request?---Yes.

And that the file be transferred to lending services?---Yes.

35 Because of the potential need for an asset sale to reduce debt to more manageable levels?---Yes.

Now, that recommendation was implemented?---It was transferred to lending services, yes.

40

Yes. And the request for further support for 12 months - - -?---Yes, it was.

- - - was accepted?---Yes.

45 And in May 2011 – so the following month – ANZ sent the Harleys a new letter of offer giving effect to that?---Yes.

And under that letter of offer, which if you would like to have it in front of you  
- - -?---Yes.

5 - - - is your exhibit 51, first document, ANZ.800.670.003.001?---Yes.

ANZ offered the Harleys a loan of \$2.3 million, expiring in March 2012, so about 10  
months later, and an overdraft facility of \$250,000 expiring in February 2012?---Yes.

10 Sorry, I may have got the number incorrect. It was ANZ.800.670.0003.0001. I  
apologise. So \$2.3 million facility, expiring in about 10 months; and an overdraft of  
\$250,000, expiring in about nine months?---That's correct.

And this was secured by the McAlinden property and guarantees from the  
Harleys?---That's right.

15 And under this letter of offer ANZ required the Harleys to provide certain financial  
information to ANZ?---Yes.

And ANZ made clear in this letter of offer that a failure to provide that information  
would be a default. Do you see that on 0004?---Yes, I can see that.

20 And, again, I think as you have already said, consistently with the recommendation  
made by the relationship manager, in July 2011 ANZ transferred the Harleys' file  
across to lending services?---Yes.

25 And the reasons for that decision, which you've referred to in your statement,  
included the fact that they were about 15 days in arrears with their interest payments.  
This is 18 and 19 of your statement?---Yes. So 18 and 19 record a range of reasons.

30 Yes. So they include, firstly, that they're about 15 days in arrears with their interest  
payments, they've had consecutive trading losses since 2005, and they haven't  
provided the bank with some of the information that they were required to provide  
about their business?---Yes. And where do I refer to the 15 days?

35 I will find that for you - - -?---Thank you.

- - - Mr Steinberg. We will find that for you?---Okay. Thank you.

40 What you say is that they were in arrears?---I say they were in arrears.

We will see if we can locate whether we're correct in that it was 15 days?---Yes.

But you include the fact that they were in arrears - - -?---That's correct.

45 - - - on their interest payments. Thank you. So the credit memorandum, having been  
obtained in July 2011, in - I'm sorry - the transfer to lending services having been in

July 2011 – I apologise – in August 2011, ANZ told the Harleys that their file was moving across to lending services?---That’s right.

5 And on 16 August 2011, the Harleys’ new relationship manager, Mr Davis, prepared a take-over diary note summarising the situation for the Harleys, which you’ve exhibited as exhibit 7 to your statement, ANZ.023.005.0079?---Yes.

That’s where we find the 15 days, Mr Steinberg?---Okay.

10 So the current position, which we see halfway down the page, as recorded in this diary note, is that as at the date of transfer the following out of order positions were identified:

*ABL interest arrears of \$41,764, 15 days.*

15

?---Yes.

Continuing:

20 *Funds are now available in the OD –*

The overdraft?---That’s right.

Continuing:

25

*...to cover, but will hold off making a manual payment and maintain the default for now.*

?---Yes.

30

So this is the monetary default that you refer to at this point in your statement. Is that right?---Yes, it is.

35 And the current position also includes that the customers have failed to table quarterly data and property sales update by the due date of 15 July?---That’s right.

And that’s the non-monetary default that you refer to as having happened at this point in your statement?---Yes.

40 Can I ask you before we move on, why would ANZ hold off on making a manual payment of the interest arrears from the overdraft and maintain the default?---Yes. So I’m looking back and assuming what the relationship manager was – had in mind when that decision was made. And what I believe he was thinking was that he didn’t want to debit the customer’s overdraft account without getting their authority to do  
45 so. That’s what I believe is behind that particular comment.

5 Which resulted in the Harleys remaining in financial default?---It did result in – in that happening. But my understanding is that at a point in time – I’m not exactly sure when, but very shortly after this – that transfer did happen. So what I believe was behind this decision was more a desire or a need to get the customer’s authority  
---

Yes?--- - - - rather than, as it appears, trying to subsist the default.

10 I see?---That’s my understanding.

Can I ask you to turn to the following page, 0080, where we see the relationship manager setting out the history of this file to date?---Yes.

15 And can I point to a number of the matters that he refers to under the heading Brief History. We see there that that includes a note that the sheep flock has been progressively reduced over the past few years to fund losses and interest costs on the loans?---Yes, I see that.

20 The relationship manager also sets out his views of the Harleys’ attempts to sell their land?---Yes.

25 And in the eighth bullet point down he sets out the current prices at which the lots are listed for sale and the amounts that the Harleys are willing to accept for them?---Yes.

And, underneath that, he expresses the view that the Harleys may be:

*Unwilling to sell at market value or consider any real offers put forward.*

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

And a few pages over at 0083, we see a part of the document headed Safety Assessment, which records that there was a:

35 *Security shortfall. The LVR is high at 80 per cent against land values alone.*

?---Yes.

40 And the Harleys’ equity after adjustments to reflect the bank land values was 39 per cent, which was described as:

*...at or below the critical threshold and, based on industry guidelines, is unviable.*

45 ?---Yes, I see that.

And over the page at 0084, we see a summary of, firstly, the Customer's Strategy for dealing with this situation, which was to go ahead and pursue the subdivision and land sales as a means to reduce or clear the debt?---Yes.

5 And underneath that, there's a summary of the options available to the bank, which, again, include – well, again are retain, upgrade and exit. And retain is described as:

*Allowing the Harleys one final opportunity to take control of the matters themselves on the provision that they meet all their bank obligations.*

10

?---Yes.

And exit is described as:

15 *Exit on the basis of the monetary or non-monetary defaults, and sell the security properties.*

Do you see around the sale of the security properties in the last part there?---Yes, I see that. Yes, I do.

20

And underneath we see the recommendation, which is:

*Provided customers promptly address the current defaults, then willing to allow them time to effect the land sales under their own control. Should that not occur, then we will need to consider moving to an exit strategy.*

25

?---Yes.

30 So can I put to you that the key themes that emerge from this document are that land sales were necessary to reduce the debt?---Yes.

ANZ was willing to give the Harleys an opportunity to sell the land themselves?---That's right.

35 But ANZ believed the Harleys had unrealistic expectations about the value of their land in the current market?---Yes.

40 Did ANZ meet with the Harleys to discuss this position or to discuss the transfer of their file across to lending services?---There was no face-to-face meeting. There were a number of telephone conversations.

Should there have been a face-to-face meeting?---Yes.

45 And then, in September 2011 – that diary note is 16 August that we're moving on from – 16 August 2011 - - -?---So which tab?

I'm sorry. I'm just moving on in time first, and then I will show you – you said that there were phone contacts. What I want to suggest to you is that one of those phone contacts was in September. And there's a diary note, which is exhibit 39 to your statement, dated 26 September 2011, that deals with that phone conversation,  
5 ANZ.800.644.0260. Can you see in the background section there that Mr Davis from the bank had spoken to Rod Grieve, who was the Harleys agricultural consultant or farm adviser?---Yes, I can.

10 And they discussed a potential meeting between the ANZ and the Harleys. And Mr Davis records that he decided to ring the Harleys directly to discuss the meeting – the proposed meeting?---Yes.

15 He was unable to travel to the farm to meet with the Harleys. He said he was happy to meet them in Perth?---That's right.

And did Mr Davis ever travel to the farm to meet with the Harleys?---I don't believe he did, no.

20 Was that acceptable?---No.

25 There's then a reference to a phone call between Mr Davis and Mrs Harley underneath this. They discuss the Harleys' financial position and the bank's requirement, which we saw from the letter of offer that I showed you, that the Harleys repay their \$2.3 million loan by the end of March 2012?---Can you take me to a bullet point on that one.

Yes?---Please.

30 It's the fifth – sixth bullet point down?---Yes, I can see that.

So they've discussed the bank's requirement that they repay their \$2.3 million loan by the end of March 2012, which at this stage is about six months away?---Yes.

35 And they discuss three possible options, which we see over the page at 0261, three possible options to meet the deadline. And they were asset sales, refinance, or assistance from the Harleys' extended family?---Yes.

40 And Mrs Harley told Mr Davis that they had attempted to refinance, but that had been unsuccessful. Do you see that? About halfway down:

*Regarding refinance –*

?---Yes.

45 And do you see that she also told Mr Davis that their extended family weren't in a position to assist them financially? Second dot point from the bottom?---Yes. and

can I just clarify before regarding the refinance. What Janine said was that they had attempted this late last year.

Yes?---Yes.

5

I take it from that they attempted unsuccessfully, because they were still with ANZ at this point?---Yes. That's – yes. That's possible, yes.

10 Yes. So refinancing wasn't going to work, extended family didn't have money to assist. You see that?---That's right, yes.

So that left the final option, which was asset sales?---Yes.

15 And Mr Davis told Mrs Harley that if the properties were fairly priced for the current market, there should be buyers in the market, particularly post-harvest?---That's right.

And Mr Davis said in conclusion at the bottom that:

20 *In the event that all options had been fully explored and failed to materialise, then ANZ would need to consider its position. This could be that an extension is necessary. And, if that was the case, I forewarned that I would require external valuations, at their cost, and that their interest rate margins would be reviewed upwards. No commitment was given as to supporting any extension.*

25

?---Yes.

That was the position expressed to Mrs Harley by Mr Davis at this time?---Yes, that's right.

30

35 What do you say to that, Mr Steinberg? Was that an acceptable position for the bank to be taking and conveying to Mrs Harley?---Well, looking back on that as if we were doing this today, we would be taking a different position. As I said earlier, back in 2011 it was not uncommon that we would increase interest rates. So it was in accordance with the practices that were being undertaken at the time. But I – I accept that today that wouldn't happen. In regard to his comment about not giving any commitment to supporting an extension, look, that's a – that's a difficult message to communicate. Another way of looking at that is that it's just complete honesty and transparency with a customer. You're just telling the customer the truth.

40

I see?---But I can – I can accept that it's a hard message for the Harleys to receive.

And then a few months later in February, ANZ had the parcels making up the property valued?---Can you take me to that.

45

That's paragraph 64 of your statement?---Yes, that's right.

Did ANZ charge the Harleys the cost of those valuations?---Yes, we did.

And did ANZ provide the valuations to the Harleys?---I don't believe we did, no.

5 But in the phone call we've seen reference to in September 2011, Mr Davis had emphasised to Mrs Harley the importance of ensuring the land was fairly priced, hadn't he?---Yes, he had.

10 And wouldn't it have helped the Harleys to do that if they had been given copies of the valuations they had paid for?---Yes, it would have.

15 And you accept that ANZ should have provided them with those valuations?---It wasn't in accordance with the practice at the time, but certainly if this was being done today, then, yes, I agree with that.

20 And do you accept that ANZ should, at this time, irrespective of the practice, because of the circumstances of this case and the discussions that were being had about the importance of pricing, ANZ should have provided those valuations to the Harleys?---It's a difficult question for me to answer because I know what the practice was in those days and I know that it – it was something that was just not done in those days. But, of course, when you put that question to me, it sounds sensible that you would give it. But your question is a little bit different. It's when he was sitting there in that moment should he have done it and he didn't do it. And I know why he didn't do it, and most other people in his position would not have done that, as well.  
25 So on that basis, I can understand why – why - - -

I understand?--- - - - he did not do that.

30 It wasn't the practice or the policy to do so?---That's right. That's right.

And he would have acted consistently with the practice and policy?---That's right.

35 Which put the Harleys at a disadvantage, because they were expected to price these properties fairly, but they weren't told what value the valuer had given them?---I think that comment just needs to be balanced with the – with the possibility that the Harleys could have undertaken their own valuation, or they could have obtained an appraisal value from a real estate agent. So there were other avenues.

40 But they had paid for the valuations that you already had?---Yes.

45 So you think they should have paid for additional valuations?---I'm only putting out some possibilities. And, I guess, it was also open to the Harleys – and perhaps they did – but they could have asked the bank or Roland for a copy of the valuations. And maybe they did do that. I don't know. But that was something that was open to them to do. But with a real estate agent working for them, I would imagine that that assessment of value would have been given to them by a real estate agent.

But the Harleys were charged close to \$3000 for the valuations that ANZ obtained?---Yes.

Weren't they?---Yes.

5

And later that month, with the benefit of the valuation reports, Mr Davis prepared another credit memorandum in relation to the Harleys, which you've annexed to your statement as exhibit 39, ANZ.800.644.0260. And on the first page there - - -?---Is this the one dated 27 February 2012?

10

I'm sorry. I'm sorry. I keep getting tripped up by the fact there are multiple documents behind many of your tabs, Mr Steinberg. We need to turn to the second document behind that tab. The document ID is ANZ.023.005.0045?---Yes.

15

And we see that the purpose of this credit memorandum is described on the first page. One of the purposes is to conduct an annual review and seek to extend for a further 12 months pending asset sales?---Yes.

20

And later on, at 0053, we see the Conclusions and Recommendations of the relationship manager who prepared this credit memorandum?---Yes.

They were to extend the facility for 12 months until 31 March 2013 to allow the asset sales to occur and debts to be repaid?---Yes, I see that.

25

You see that?---Yes.

Continuing:

30

*The conclusions on face value and by looking at the financial data we can see that the customer's position is not strong.*

And, further down:

35

*The only way principal debt reductions can be achieved is by way of asset sales.*

?---I'm afraid I'm not with you now. Are you still under the Conclusions and Recommendations?

40

I am. I went from the first one down to the - - -?---To the top one?

To the fourth one?---The only way principal debt reductions can be achieved – yes. I can see that.

45

You see that. And then, a couple more down:

*As no sales have been forthcoming and property sales, being the only means to achieve debt reductions, will be to extend the facilities as now proposed other than commencing formal recovery action.*

5 ?---Yes.

See that? So a further period of time was given to the Harleys to continue to attempt to sell the land?---That's right.

10 Is that right?---Yes, it is.

Because they had been unable to sell it by the deadline?---Yes.

15 So this recommendation was accepted by ANZ. And there was a new letter of offer sent to the Harleys a couple of weeks later in March, which you've annexed to your statement as exhibit 12. That's ANZ.034.001.0062. And, under that letter of offer, ANZ gave the Harleys a \$2.55 million facility that expired a year later on 31 March 2013?---Yes.

20 And it was again secured over their property and by guarantees from the Harleys?---That's right.

25 And over the following year, to meet this deadline, the Harleys made efforts to sell their properties and their flock of sheep?---Yes, that's right.

In July 2012, they sold one of their parcels of land for \$170,000, and used that to pay down the debt?---Which section – which paragraph of my statement are we at?

30 That's 35 of your statement?---Yes, that's right.

And in October 2012, Mr Harley underwent back surgery after being diagnosed with a nerve condition?---I was aware that he was diagnosed with a nerve condition. Can you take me – I wasn't aware of him having had that back surgery.

35 It's dealt with in exhibit 54 of your statement, Mr Steinberg, which is a diary note dated 22 October 2012. It's a few documents in in that tab, ANZ.034.001.0034?---And what's the date of that document, Ms Orr?

40 It's 22 October 2012?---Okay. I've just got it on the screen.

If we turn to the second page of that, 0035. And I ask you to look at the heading Customer Request - - -?---Yes.

45 - - - and the information under there?---Yes. I recall that now. Yes.

Yes. So in October 2012 Mr Harley had back surgery. He had been diagnosed with a nerve condition and he was hospitalised, wasn't he?---Yes, he was.

And he was subsequently diagnosed with pneumonia?---Yes.

And Mrs Harley told ANZ that Mr Harley may never be able to return to his previous level of involvement with the farm?---Yes.

5

And a few months later, after this had happened, in January 2013, the Harleys held an auction of their sheep?---Yes.

But that was unsuccessful?---That's right.

10

In the following month, in February 2013, with ANZs consent, they succeeded in subdividing one of their parcels of land into four separate titles?---That's right.

And the following month, March 2013, they put their property up for auction?---Can you take me to that paragraph, please.

15

77?---Yes, that's right.

And they didn't receive any bids at the auction - - -?---Yes.

20

- - - did they?---That's right.

So, despite having tried to sell their flock of sheep and their property, the Harleys weren't able to repay the entirety of their debt to ANZ by 31 March 2013 as they were required to do?---Yes.

25

And in April 2013, Mr Davis and another ANZ staff member spoke with the Harleys on the phone. We know that from your exhibit 41, ANZ.800.644.0229. And we see, third paragraph down – this is a phone call with Janine and Steve Harley:

30

*Manager Davis confirmed we're following up on his discussions with Janine where they discussed the auction outcome. No bids at all. Whether they have obtained advice on solvency and generally seeking an update on their financial situation.*

35

?---Yes.

Four paragraphs down:

*Manager Davis reconfirmed that the facility has expired and is, therefore, in default, but made it very clear that at this time the bank doesn't have any immediate plans to take enforcement action.*

40

?---That's right.

45

Continuing:

*Manager Davis advised that as a consequence of the debt not being repaid by expiry and/or by the property auction, we would need to consider their budgets already tabled and consider any extension.*

5 ?---Yes.

And:

10 *Manager Davis advised that their property will need to be revalued as part of this process.*

And someone has provided a quote of 2.2 including GST. And another member of the bank is going to email them a valuation authority for them to sign and return?---That's right.

15

And the following month, in May, there were some emails between the Harleys and ANZ. If we turn to your exhibit 42, ANZ.023.005.0260. And we look at the email at the bottom of that page. On 11 May, Mrs Harley emailed Mr Davis:

20 *Hi, Roland. Just wanted to let you know that Stephen has had a heart attack and was transferred to Perth on Friday by RFDS and will be operated on Monday, 13 May 2013. I hope you can now understand the pressure we have been under in the last two years trying to resolve our financial issues. The last few weeks waiting for a decision has been extremely stressful on Stephen and myself and we ask that the bank take this into consideration when a decision is made. We look forward to hearing from you with the bank's decision and hope the outcome is what is best for both parties. Regards, Janine Harley.*

25

Now, we see Mr Davis' response at the top of that page, passing on his:

30

*Best wishes for Stephen, you and the family at this time.*

?---Yes.

35 Now, less than a month after this, ANZ sent the Harleys a letter, which you've annexed as exhibit 43 to your statement, ANZ.800.644.0718. So it's 10 June. And ANZ writes to the Harleys – Mr Davis writes to the Harleys advising them that they're in default and the bank is now entitled to exercise the rights given to it upon default. Do you see that?---Yes, I do.

40

Do you think it was appropriate for the bank to send a default letter to the Harleys within a few weeks after Mr Harley's heart attack?---I think it would have been better if that notice would not have gone out when it did. I would just like to put a little bit of context around it, but, again, not justification. But on 10 June Mr Davis did have a discussion with the Harleys' lawyer. And during that discussion he let the Harleys' lawyer know that he was going to issue the notice of default, so a pre-warning, if you like. I am – I am assuming that one of the reasons that Mr Davis felt

45

it was important to issue that notice was to make sure that the bank's rights were at least reserved and not waived. But in direct response to your question, I would prefer to have seen a longer period of time and a better understanding of Mr Harley's health.

5

This was about getting the enforcement process moving, wasn't it? It's a default notice?---Yes.

10 And the Harleys have been told that enforcement action will be taken upon further default?---There's nothing in that notice that refers to enforcement action. So, based on what's in front of me, I'm – I'm not agreeing with that suggestion.

15 All right. So later that month – this is 10 June. Later in June, ANZ proceeded with a further valuation of the parcels that made up the property. That's paragraph 64 of your statement?---Yes, that's correct.

And the cost of those valuations was again charged to the Harleys?---That's correct.

20 And were the valuations provided to the Harleys?---Not to my knowledge.

And in June 2013, with the benefit of those valuations, Mr Davis prepared another credit memorandum in relation to the Harleys?---Yes.

25 And you've annexed that as exhibit 44 to your statement, ANZ.023.005.0005. And we see – if we could blow up the first box on the page – that the purpose of the credit memorandum was to:

30 *Document the customers' failure to repay the debt in full by the expiry date, document their request for extension, conduct an annual review and document change of bank strategy from retain to exit.*

?---Yes.

35 And on the second page, which is the second box on this page, we see half a dozen points down that Mr Davis records that:

40 *Janine Harley is quite difficult to deal with, as she becomes very emotional during most conversations, especially with me. She and her farm consultant have at various times complained about me, the bank and how they feel they have been treated. I have and continue to reject any such accusations whilst noting that the subject of our conversations are difficult, given their financial circumstances.*

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

And did anyone at ANZ investigate these complaints that Mrs Harley was making about Mr Davis?---The only escalation of this matter that I'm aware of is that Mr

Davis did inform his direct manager, Keith Weybury, of this particular matter. I'm not sure what investigations he undertook in relation to it, but it was escalated to Mr Davis' immediate manager.

5 Have you seen any documents that suggest that Mr Davis' manager investigated the complaints?---No, I haven't seen anything. No.

10 So ANZ left it to Mr Davis to deal with the complaints that had been made against him?---Look, all I can say is that it was escalated. Mr Weybury is no longer with the bank, so I'm not able to make inquiries of him. That's – that's what I know about the matter.

15 Okay. So if we turn to 0013 in this document, we see Mr Davis' recommendations in this credit memorandum. And do you see about halfway down in the first box – halfway down under Conclusions and Recommendations, Mr Davis says:

*Options are, essentially, (1) extend again via another letter of offer; (2) extend, but under a formalised deed, an asset management agreement or forbearance; or, option (3), commence recovery action, which could include R and M –*

20 Receiver and manager?---That's right.

Continuing:

25 *...being appointed*

?---Yes

Continuing:

30 *Option 1 not considered appropriate in the circumstances given the repeated inability to meet the expiry dates; option 2 considered as a fair outcome –*

For the reasons that are listed there. And:

35 *Option 3 contrary to points raised in option.*

So the recommendation made by Mr Davis was option 2, extend, but under a formalised deed?---That's correct.

40 And was that recommendation accepted?---Yes, it was.

And in August 2013, a couple of months later, ANZ issued notices of demand to the Harleys?---Can you please take me to that paragraph, Ms Orr.

45 Yes, I can. It's not in your statement. ANZ.800.705.0249. Do you see that letter from ANZs lawyers?---So this is after the expiry of the deed. Is that right?

No – I'm sorry. Yes, this is, but I want to take you to a reference within the letter, the first dot point down:

5                    *Our client issued notices of demand on 5 August 2013 and to Mr Stephen Harley and Janine Harley on 15 August 2013.*

?---Yes.

10                    So, based on that, do you accept that in August 2013 the Harleys were issued with notices of demand?---Yes, I do. And, Ms Orr, if I could just give you some context as to what I understand about this.

15                    Yes?---So I'm not a lawyer, but – so – but it appears to me, from reading the file, that the way that this deed was set up was to obtain a – the ability to obtain an immediate judgment against the Harleys if they fail to meet the terms of the deed, and that this demand that you're referring to now was that procedural – the procedural side of setting up the deed for that.

20                    Yes, that's right?---Yes.

                      So this is step 1, the letter of demand, which is referred to in this letter. That happens - - -?---Yes. The point I'm making is that that was to be held in escrow. It wasn't – as I understand it, it wasn't a demand that was issued on them that they were expected to deal with on – in 2013.

25                    Yes?---It was to be held in escrow.

30                    Yes, I see. The letter of demand, do you know if it made that clear?---Look, I can't say whether the Harleys understood it. My understanding is that they were represented. They had - - -

                      Yes?--- - - - legal representation. So, on that basis, I can only assume that it was explained to them.

35                    Yes. I understand. Could I tender that letter, Commissioner.

                      THE COMMISSIONER: Exhibit 4.19, letter Corrs Chambers Westgarth re farm debt mediation, 21 May 2014.

40                    **EXHIBIT #4.19 LETTER CORRS CHAMBERS WESTGARTH RE FARM DEBT MEDIATION DATED 21/05/2014**

45                    MS ORR: And in September 2013 – so a month later – ANZ entered into a settlement deed with the Harleys?---Yes, that's right.

And you've annexed that as exhibit 19 to your statement?---Yes, I have.

That's ANZ.800.644.0421. And if we turn to 0424, we see that the deed recites that the Harleys were in default, the bank was immediately entitled to exercise its rights and entitlements under the documents, and the bank had commenced legal proceedings?---Yes.

Now, essentially, under this deed, the Harleys agreed to repay their debt before 31 March 2014, which was six months later. Is that right?---Yes, that's right.

And if they repaid the debt before that date, ANZ agreed to release them from all claims and refrain from taking any steps to enforce its rights?---That's right.

But if they failed to pay the debt within that six-month period, they were required to give ANZ vacant possession of their properties by 1 April 2014?---That's right.

So they were required to repay by 31 March 2014. And if they couldn't pay on 31 March 2014, they were required to give vacant possession by the following day, 1 April?---Can you take me to that particular clause, please.

Yes, clause 8 at 0432?---By 1 April.

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

Continuing:

*The obligors agree to deliver up vacant possession of the properties by 1 April 2014.*

?---Yes, I do.

And ANZ was permitted at that time to file orders in the Supreme Court of Western Australia under which judgment could be entered against the Harleys?---Yes, that's right.

So, under this deed, the Harleys had one day to give ANZ vacant possession of their property if they couldn't pay the debt by 31 March, which was six months later?---That's a literal interpretation. I think it's important, Ms Orr, to put some context to this. So yes, you're right. If they didn't make the payment, then they would have to give up possession on 1 April. There was a six-month lead-up in this particular agreement. But I also think, importantly – or, relevantly, this had been an asset sale process that had been going on for some years, so from the acquisition date, and even before that, but from 1 March 2010. We then have the file transferred into lending services in 2011, and then there's another – you know, almost three years of attempts at asset sales in order to repay the debt. So I just want to just give that context in accepting that this does say what you're suggesting it says, but there is some context behind that.

Well, it's not just what I'm suggesting it says, Mr Steinberg. This is a legal document that the bank asked the Harleys to sign?---Yes. No. I agree. And I accept that. It does say that.

5 Yes?---But I'm just putting that in the context of having been on a program for, let's say three years or longer, in order to get to that particular point. That's just the point I'm wanting to make.

10 I've spent a bit of time taking you through those three years, Mr Steinberg, because what we see is that the Harleys were attempting to sell their properties, they were attempting to sell their flock, they were trying to price the properties without the benefit of the valuations that at two different stages ANZ obtained and didn't provide to them, and they were dealing with the ill health of Mr Harley?---Yes.

15 And you asked them to sign a legal agreement which gave them six months to pay the entirety of the debt. And if they couldn't pay it within six months, they had to provide vacant possession the following day?---That's right.

20 Was that appropriate, Mr Steinberg?---Again, I think if it's put into the context that I've put it in - - -

THE COMMISSIONER: Well, you will need to explain to me why the context leads to some relevant conclusion. I understand what you refer to when you speak about the context. Why does that bear upon whether 24 hours is the right period  
25 between due date for payment and vacant possession?---I guess what I'm suggesting, Commissioner, is that the Harleys were aware for six months that by 31 March they had their obligation to repay this amount and aware of the ramifications of not meeting that obligation. So leading up to it, they would have been aware, if they weren't going to meet that, that they would have to vacate. I would prefer to see a  
30 longer period of time in here. There's no doubt about that. But I'm – again, I'm just trying to put a bit of context so that it's understood that this falls at the back of a very long asset realisation program that hadn't up until this point been successful.

35 I understand the length of period involved. Was one day a reasonable period?---Commissioner, in – in an environment where we've executed an agreement with a customer who has been advised of the ramifications of the agreement, I believe it is reasonable.

40 Well, that's premised on the understanding that the client has got some choice – the customer has got some choice. What choice did the customer have except to sign on the terms proffered by the bank?---So, again, Commissioner, if I could refer to the conversation that the bank had with the Harleys' lawyers in June 2013. My recollection of that particular meeting was that the lawyers acting for the Harleys acknowledged and accepted that this had been going on for some time and that the  
45 Harleys had to repay their – their debts to the bank. So on – on the basis that they had the opportunity to – to be advised and to have a long - - -

Gave them a further six months to pay. Let's not debate whether that's good, bad or indifferent. Let's start accepting that the bank is giving them – the bank would say another six months to pay. My focus is on end of period, out next day?---Yes.

5 Was that bit of the agreement reasonable?---Very difficult question for me to say yes to, Commissioner. So – but you've heard – you've heard what my view is on this.

Yes?---You know - - -

10 Look - - -?---I can only have a view and express it to you, you know.

..... so. And I want to be quite sure that you've had your chance to express your view about whether you think it's reasonable. If you think it's reasonable, you tell me that?---Yes.

15

I may accept that, I may not. I've got to make a call at some time and I've got to write something down?---Yes.

But you have your view. I'm not seeking to change your view?---Yes.

20

I just want to understand what your view is?---Yes. So, again, if I – if I could just be bold for one moment, Commissioner, and say to you that in the context of every – I know you don't like it when I say that, but in the context of everything that happened, which is how I believe these things need to be analysed – I hear your question which tries to focus me on that one particular moment in time. I don't accept that that is the right way for me to make my assessment. I make my assessment based on the entire context of the story and on that basis I form my view.

25

Yes. Thank you.

30

MS ORR: Was it appropriate, Mr Steinberg, for ANZ to make it a condition of deferring any enforcement action that it could immediately take steps to enforce if the Harleys didn't pay by the deadline?---Are you referring to, then, the judgment in the Supreme Court - - -

35

All aspects of enforcing. They were to occur immediately?---Again, I think the answer to that – the answer is I believe it was reasonable, for the same reasons as I gave before.

40

I wanted to put the question to you that different way, because I would like to understand why this situation differs from a situation you've dealt with in another statement, which is the statement that I mentioned right at the start of your evidence, which had not yet been tendered. And I have had some discussions with Dr Collins. And I will tender that statement. So you have one more original statement that you've provided - - -?---Yes, I do.

45

- - - to the Commission, which was in response to Rubric - - -?---4-17.

- - - 4-17?---Yes.

A statement dated 18 June 2018?---Yes.

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

Yes. I will tender that statement, Commissioner.

10 THE COMMISSIONER: Exhibit 4.20, statement of Steinberg 18 June '18 concerning Rubric 4-17.

**EXHIBIT #4.20 STATEMENT OF STEINBERG CONCERNING RUBRIC 4-17  
DATED 18/06/2018**

15

MS ORR: And do you have a copy of that statement there, Mr Steinberg?---Yes, I do.

20 And could I ask you to turn to paragraph 82?---80 which, I'm sorry?

82 in the statement, which is at ANZ.999.010.0067. And I should just point out to you – I'm sure you're aware, Mr Steinberg – that there is a non-publication order over the name of the customer to which this statement relates?---Okay.

25

This was not a Landmark customer?---Yes.

30 This is another customer that we asked ANZ to provide a statement on and you provided that statement. So, in relation to this particular customer, you said in the last sentence that:

35 *ANZ, through its solicitors, should also not have proposed to the customer as a condition of the deferral that ANZ could immediately take steps to enforce its securities in respect of the facilities before ANZ had exhausted other alternatives.*

?---Yes.

40 You see that?---Yes, I do.

That was your position in relation to this customer?---Yes.

45 Why do you not hold the same view in relation to the Harleys?---So that question, Ms Orr, requires me to remember the particular circumstances of this particular case study. And – and as you know, I look at each one individually. So I keep struggling with your – your request for me to make comparisons, because I don't believe you always can. But, in this particular case, my recollection is that we offered the facility

to this particular customer and 12 months later that facility expired. And there was a much, much shorter horizon, if I could call it, between the acquisition of this customer in approximately 2014 and the events that I describe in paragraph 82, whereas in the case of the previous file – can I mention that name - - -

5

Yes?---The Harleys.

In relation to the Harleys, yes?---In respect to the Harleys, as I said earlier, we were on a program that had gone for a number of years. And so there was a – if you like, a consistency in the messaging and in the manner in which we were dealing with that customer. So in this case, I – I felt that more time could have been given.

10

Okay. So it's about the time, about the history of the matter prior to that happening?---I think that's one - - -

15

Is that the distinction you draw?---I think that's one of the elements, but, as I keep saying, every file has got its own unique circumstances. I don't mean to make things difficult for you by saying that, but I honestly believe that.

20 And if – if we're back in the Harleys now?---Yes.

If the Harleys' circumstances arose today, would ANZ ask the Harleys to enter into a deed in these terms?---I don't believe we would, no.

25 And why not?---Because in today's environment we would probably look at the one day to vacate, and we would – you know, when something like that would come to me for approval, I would look at that and say – and suggest or require that we make that period longer.

30 And would you do that because one day isn't fair, is it, Mr Steinberg?---No. Fair is not the word that I would use. I have said before that I think what happened here was fair in the – in the circumstances. I wouldn't do it, because in our current – under our current culture, the focus is on having more empathy for our customers and giving them more time and more opportunity and more flexibility in the way that we manage our solutions.

35

Your current culture is a fairer culture, isn't it, Mr Steinberg, than the culture you had in place at this time that permitted the bank to engage with the Harleys in this way?---It's a different culture, and it – and it results in outcomes that I believe are fairer for the customers.

40

Okay. After this deed was entered into, Mr Steinberg, the Harleys had some success in selling their parcels of land, didn't they?---Yes, they did.

45 They sold one of their parcels in September 2013 for \$224,000, and they applied that to pay down the debt. That's paragraph 37 of your statement?---That's right, yes.

And in December 2013 they sold another two parcels of land for a combined total of \$780,000?---Yes.

5 And a third parcel for \$500,000. And they applied the available proceeds from both of those sales to pay down the debt?---Yes, that's right.

So, by that time, they had sold five of the nine parcels of land?---That's correct.

10 And between January and March of the following year, 2014, in the months prior to the payment deadline under the deed of settlement, they sold more than \$15,000 of their livestock, didn't they?---Yes.

And they also applied all of that to pay down their debt?---That's right.

15 So, by that time, they had sold enough properties and enough livestock to pay down around \$1.6 million of their \$2.5 million debt?---Yes.

20 And a few days before the deadline, on 31 March 2014, the Harleys' lawyer sent an email to ANZs lawyer, which you've annexed as exhibit 45 to your statement, ANZ.800.644.0387?---In which paragraph, Ms Orr, are we referring to in my statement? Can you take me to the - - -

I'm referring to an exhibit to your statement - - -?---Okay.

25 - - - which is exhibit 45. Perhaps if we could have – while you're looking for that paragraph and the Commissioner is reading the document, the relevant pages are 0388, which could be on the screen with 0389. You're concerned, Mr Steinberg, to see what you said about this exhibit in your statement?---It just helps me bring my recollection back.

30 Yes. Yes?---And I don't have the same agility to work around the documents as you do, so – but I've got the exhibits. I've got that.

You've got the exhibit?---Yes, I do.

35 Well, can I just direct you to the email and see how we go?---Yes. Yes.

Yes. So it's an email that starts at 0388 and runs over on to 0389?---Yes.

40 And we can see from that email that the Harleys' sought an extension of time. So this is 27 March, four days before the deadline. They sought an extension of time to the end of the year, 31 December 2014, on the basis that this would take them through spring when there is the most interest in sales before it gets too hot. Do you see that?---Yes.

45 And their lawyer points out that, whilst they are in default of the loan, they've sold five of the nine lots. And he gives the prices that they got for those lots. And he

points out that those lots included the lots that they considered would be the most difficult to sell. Do you see that?---Yes, I do.

5 And he then lists the remaining lots for sale, which included the lot on which the Harleys' house was located?---Yes, that's right.

And over the page, at 0389, we see that he says towards the end of the email:

10 *Given that five of nine lots have sold within about 12 months, without substantial discounting, we consider that our client's efforts are genuine and do not present substantial risk of loss to your client. The current sale strategy gives substantial impetus to our clients to achieve the remaining sales, and still have equity in remaining property (or surplus sale proceeds).*

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

Now, ANZ didn't provide a response to this request for an extension for about a month, until 28 April 2014, which we see over the page at 0387. There was a communication in the meantime in which the lawyers said they were seeking  
20 instructions?---Yes.

And the instructions are provided and conveyed on 28 April. And on that date ANZ's lawyer said:

25 *I am instructed to advise that my client is not prepared to agree to the requested extension of time until 31 December 2014 - - -*

?---Yes.

30 Continuing:

35 *...(or any extension at all). Accordingly, as your clients are in default under the terms of the settlement deed... and have failed to pay the debt... my client intends to exercise its rights... please confirm by return email that your clients will now provide vacant possession... of the lots which remain unsold which based on your email below I understand are -*

The particular lots?---Yes.

40 Including the lot with the house in which the Harleys were living?---That's right.

Why did ANZ decline this request, Mr Steinberg?---Well, my assessment is that the bank took the view that this matter had gone on for a very long time and reached a point where it needed to be concluded. And it felt that it had given the Harleys  
45 sufficient time, through extensions and facilities and that a point in time had to come where a decision was made to enforce and have the bank's debt repaid.

Despite the fact that the Harleys were asking for a relatively short extension to get them to the part of the year where there was the most interest in sales, and they had already sold the lots that they regarded as difficult to sell?---Yes. It's a – it's a difficult decision to make, Ms Orr, but at – at some point the line in the sand needs to be drawn and the decision has to be made at some point. And for the people who are making this decision, they felt that at this point they had reached that position.

I see. There's a briefing note - - -

10 THE COMMISSIONER: Explain to me why you get to a point where you stop considering it and just say enough is enough. Why?---It's a combination of reasons, Commissioner. First of all, there's bank issues in terms of the cost to the bank to carry the loan and the additional capital that we have to set aside in order to support the loan. It's the fact that at some point the bank needs to simply recover the money that's owed to it.

Well, they're commercial considerations which all have a value. Let it be assumed the chopper comes down on the day you state. The bank then has to set about realising. That takes time. Realisation takes money. And then you get a price according to the time at which you sell and the level of interest that is then there. Are those matters that bear upon whether the bank is right to say enough is enough, or are they simply irrelevant?---So I think that question – I think the answer to that question today would be, yes, I agree that a greater value would be placed on the – on the human and the emotional impact of these decisions.

25 My questions must have been artlessly framed, because I was concerned to focus only on pure commercial matters, leaving aside mere matters of humanity, Mr Steinberg. Let's just look at dollars and cents. If the bank says, "Stop. Enough"?---Yes.

30 "We're taking possession today."?---Yes.

Which is the consequence of saying "enough is enough"?---Yes.

35 Am I right so far?---Yes.

Then the bank has to realise. That takes time. Yes?---That's right.

40 It takes money?---Yes.

And puts the bank into a market at a particular time?---That's right.

45 Are those considerations, looked at purely in terms of dollars and cents, considerations that bear upon whether the bank should say, "Today is the day. Stop. Enough"?---I think the one other factor, Commissioner, is certainty, that when the bank enforces, then we know that there's a very high likelihood that the collateral will be sold and the bank's debt will be paid. If, on the other hand - - -

The bank's debt will be paid?---Well, or to be reduced, at least.

Just so?---Yes.

5 And there is a real and radical difference, isn't there, between "and the bank's debt will be paid", one outcome - - -?---Yes.

- - - "and the bank's debt will be reduced", radically separate outcome?---Yes.

10 What I'm inviting attention to - - -?---Yes.

- - - is whether those are questions that bear upon whether, you know, as I have said, "Today is the day. We move today"?---And I think using the terminology debt will be reduced is probably the more appropriate terminology, because in most of these cases we are – we are losing money.

15 Yes?---But, as I was saying, what it brings us is the certainty of knowing it's going to happen. If, on the other hand, we extended the facilities to – I think it was a nine-month extension that was being requested in this particular case – then there's always the possibility that we will get to nine months, still find ourselves in the same position and then be in the position that we're making – that you and I were just contemplating, but nine months down the track. And then, of course, the same question presents itself again. Do you then give another nine months? And so I'm not sure if that answers your question, but that's the analysis that goes through our mind when we're making these decisions.

Yes.

30 MS ORR: You've annexed to your statement a briefing note dealing with the decision to decline the Harleys' request for an extension. That's exhibit 45, ANZ.800.644.0707?---What exhibit number was it?

45?---Yes.

35 Do you see the first page of that records a history of the matter and the fact that the customers had sought an extension of time until 31 December '14 and that that request was assessed and declined. And we see references to two representatives of the bank there next to that, the second-last dot point in the first block?---Yes, I see that.

40

And, over the page at 0708, the reasons for the decision are set out:

45 *The customers have already been provided time and opportunity to repay the bank in full. Deed arrangements confirm this. Bank has been entirely clear on what was expected. Sale of the remaining properties will not see the bank cleared in full. Suggestions of refinancing to another bank is not yet substantiated and likely to be at least six months away. Is regrettable that the*

*customers have been unable or unwilling to complete per the deed requirements.*

5 And then we see the proposal, which is that:

*The bank is to appoint an insolvency firm to act on its behalf to take control of the assets and sell in a timely manner.*

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

Now, that was the recommendation. We see that down the bottom:

*RSM to be appointed as soon as practicable as agent to secure and then sell the property.*

15 ?---Yes.

Was that recommendation approved?---Yes, it was.

20 Who approved it?---I was one of the approvers.

Yes. It was your decision, wasn't it, Mr Steinberg?---Yes, it was.

25 You didn't mention your involvement in this decision in your statement. Was there a reason for that?---Yes. To be honest, I didn't – when I was writing the statement, I hadn't recalled that I had made that decision. And then when I was going through documents later on, that became clear to me.

30 I see. They may include the document that I'm going to ask you to look at, which is ANZ.800.654.0968?---That's not one that I have, is it?

I think it will be in your – what you've been referring to as your tender bundle?---Okay. I will look at it. Yes.

35 Sorry. I just have to – now, it's an email chain that shows at 0968 that you were sent the briefing note by Mr Saliba, is it?---Yes, that's right.

On 22 April 2014?---Yes.

40 And you approved the appointment of the insolvency firm, subject to dual approval from Mr Beggs?---That's correct.

Who gave that approval?---Mr Beggs did.

45 Yes. Sorry. I mean, who did give that approval, Mr Beggs?---That's right, yes.

Sorry. Poorly put question?---Yes.

You told Mr Beggs here that:

5           *This was an ex-Landmark connection that is an exit. And we have provided more than sufficient time for the borrowers to sell the property themselves, which they have not done.*

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

10           Now, do you stand by this decision, Mr Steinberg?---Yes, I do.

You say this was the right thing for the bank to have done, to have appointed external agents to sell the property in these circumstances?---Yes.

15           In your statement, you say that:

20           *In the circumstances of the Harleys' request for an extension, which included the fact that they demonstrated some commitment to and success with sale of assets, and that Mr Harley had suffered ill health, today ANZ would be more likely to grant the extension or consider some other flexible solution such as debt restructuring.*

That's 96. Do you remember saying that?---Yes, I do.

25           So a different decision would be made today?---Yes.

So when I ask you if you stand by this decision, do you mean by that that you stand by it at the time that you made it, but today you would make a different one?---Yes.

30           And what's the decision you would make today?---In – in the circumstances of them – of the Harleys having sold five out of the nine properties, my decision today would be more likely to extend some additional time.

35           The Harleys had clearly demonstrated their willingness to sell their properties and their livestock, hadn't they?---Yes, they had.

And they had had some success in achieving those sales?---They had success over a long period of time, yes.

40           Well, in the period since they entered into the settlement deed they had considerable success. They sold a number of properties?---Yes.

And this had all occurred in a period when Mr Harley was recovering from a heart attack?---Yes.

45           And requiring the Harleys to give ANZ vacant possession of their land was likely to cause distress to the Harleys, wasn't it?---Yes.

As was requiring the Harleys to pay the enforcement costs incurred by the agents for the mortgagee in possession?---Yes. To be clear, those costs would have been paid out of the proceeds of the sale of the property, but I understand that ultimately they are borne by the customers.

5

Yes?---Yes.

And that would have caused them distress, wouldn't it?---Yes.

10 And it would have caused them distress that you were moving to obtain judgment against them in the legal proceedings in the sum of \$2.579 million plus interest?---Yes, that would.

15 Was there any reason for ANZ to think that agents for a mortgagee in possession could achieve a better price for the sale of the remaining parcels of land than the Harleys could?---What we were looking for, Ms Orr, at this point in time was to bring this matter to a conclusion, and certainty. They were drivers behind this particular decision. And as I have said before, this matter had been going on since 2010 and before. And a point had to come where this decision was made. And with 20 the certainty being needed, that's when that decision was made.

25 Well, I don't think – I'm sorry. I don't think that has answered my question. My question was was there any reason for ANZ to think that agents for a mortgagee in possession could get a better price for the sale of the remaining parcels than the Harleys could have?---So perhaps – I mean, the answer to that is I don't know, but I guess another part of the answer to that is that at that point the Harleys hadn't sold those remaining properties.

30 No?---So in that respect, what the mortgagee in possession would achieve for us would be to actually get those properties sold.

35 But the Harleys were only asking for a matter of months to try and sell them themselves, weren't they?---Yes, but we had already given them a number of years to achieve this.

I see. Well, in the circumstances I have just outlined to you about – you accepted that they were willing to sell the properties, they had had some success, that Mr Harley was recovering from his heart attack, do you accept that the community would expect ANZ to have explored alternatives to enforcement action at this 40 point?---So my response to that is that I believe we have met community standards and expectations in the manner in which we've managed this file.

But did you ask the Harleys to engage in a mediation?---No.

45 Did you explore alternatives to enforcement action before this decision was made in April 2014?---Yes, I believe we did.

What alternatives do you believe you explored?---Well, during the course of the management of this file, Mr Davis provided a number of extensions to the facilities. There is a record on his credit memorandums of him specifically considering alternatives like enforcement or extensions. But, instead, at the earlier part of this  
5 file, deciding to go for extension of facilities, there is aspects where – or times when the Harleys weren't able to pay their interest and Mr Davis provided them with some forbearance to – to cover that. There was a period where the Harleys weren't able to meet the payment for a particular vehicle. And so I've actually now forgotten what your question was, but - - -

10 About exploring alternatives - - -?---That's right. So - - -

- - - to enforcement action?---So I think, Ms Orr, that alternatives were explored to enforcement action and the enforcement action came after a number of years of trying to get the debt repaid.  
15

Why not have a mediation?---Well, this is in Western Australia where there is no mandatory mediation, but today we would have a mediation.

20 And at that time there was voluntary mediation in Western Australia, wasn't there?---Yes, there was.

You could have had a farm debt mediation - - -?---Yes.

25 - - - with the Harleys, but you - - -?---We could have, yes.

- - - chose not to consider that?---Yes. And I expect part of the reason for that was that Mr Davis was engaging with the Harleys' lawyers and the deed was negotiated and prepared. But I accept today we would have a mediation – a farm debt  
30 mediation.

Yes. Commissioner, I tender that email chain.

35 THE COMMISSIONER: Emails between Steinberg, Saliba and others, 23 April '14, ANZ.800.654.0968, exhibit 4.21.

40 **EXHIBIT #4.21 EMAILS BETWEEN STEINBERG, SALIBA AND OTHERS DATED 23/04/2014 (ANZ.800.654.0968)**

MS ORR: And in August 2014 the agents sold the remaining four parcels of land, didn't they?---Yes, they did.

45 And that included the parcel on which the Harleys' home was located?---That's correct.

5 Now, before I come to deal with that, I just want to ask you a little bit more about enforcement action, because you told us in the statement that I tendered earlier, and you may have heard me say in the opening statement, that the evidence is that since 2015 ANZ has taken enforcement action in 30 cases involving agricultural customers?---Yes.

That's at paragraph 38 of that statement?---Yes.

10 And you will see there that you refer to there being 11 instances of enforcement action in 2015, and 12 in 2016?---That's right.

Then four in 2017 and three in 2018?---That's right.

15 And you tell us in your statement that ANZ doesn't have any reliable historical data in relation to the number of enforcement actions taken before 2015?---That's right.

But you were working in lending services at ANZ before 2015?---Yes.

20 And you were involved in making decisions about enforcement action at that time?---Yes.

25 And it's – is it likely that there would have been more enforcement action taken before 2015 compared to the years you've told us about in your statement?---So if I could refer maybe to some submissions that we made to the Parliamentary Inquiry that might help me answer that question. In March 2015, we, in preparation for appearance at the Parliamentary inquiry, prepared some data on - - -

THE COMMISSIONER: Well.

30 MS ORR: I think we might – I was waiting for your lawyers to interject, but I may do it instead to protect you, Mr Steinberg. I don't think it's wise for you to refer to submissions that you made to a Parliamentary inquiry - - -

35 THE COMMISSIONER: Parliamentary privilege intrudes, Mr Steinberg.

MS ORR: - - - because of Parliamentary privilege?---Okay. So your question is would there have been more enforcements?

40 Yes. I am asking you, based on your experience in lending services - - -?---Yes.

- - - before 2015. And if you could perhaps refer to this without thinking about what you told a Parliamentary inquiry?---I would – I would say there would have been more enforcements on an annual basis.

45 Thank you. Thank you. And what led to the drop of enforcement action, then, in 2016 and 2017?---As I said, there's a couple of matters that have contributed. The first is the establishment of the specialist agri team in lending services, and the

second would be the – the bringing in of our lending services purpose which changes the way in which we – we manage these accounts.

5 And what's different about the way that members of that specialist team that you've referred to make the decision to use enforcement action compared to how lending services used to deal with the situation before that team existed?---Again, there's a couple of things there. The first is that – that those people in the agri team are – have got, in many cases, agricultural experience and have either worked or lived on the land before, so have got the – a better connection with our customers. And can you  
10 again remind me of the question, Ms Orr.

What's different about how they - - -?---Yes.

- - - make the decision to engage an enforcement action to the way it used to  
15 be?---Yes. So that's the first reason. The second reason is, you know, we've – we've brought a lot more, you know, empathy in the way that we look at these. And, finally, the lending services purpose, which is, you know, a big change to the way we interact, behave on a daily basis.

20 And in what circumstances now does ANZ appoint receivers?---So it's – it's difficult to sort of prescribe. There's no prescribed events that lead to it. It's all based on the individual circumstances. But in – in many of the cases where we enforce today, we have a consensual arrangement with our customer to do that. In some cases we have an invitation – a written invitation from our customer to enforce such invitation given  
25 after our customer has received accounting, financial and legal advice. So - - -

What about the circumstances where you don't have an invitation from the customer? When then do you appoint receivers?---So there might be instances where there has been an insolvency, so a liquidation of a company or a bankruptcy of an  
30 individual. Outside of that, at the moment it's – it's fairly rare.

Fairly rare, did you say?---That's right. Well, if you have a look at 2017, we've only had four enforcements, in 2018 so far three. So the number of these occurring is  
35 rare.

And have the circumstances in which ANZ proceeds to appoint a receiver changed since 2010 when ANZ took over the Landmark loan book?---Yes, it has.

40 How?---So in 2015, I believe, we established – if I could just call it a panel.

Yes?---A service provider panel.

45 Yes?---Where all of our insolvency providers have signed up to a consistent set of terms and conditions. And part of our dealings with them now is that we expect that they, in the conduct of their duties, do so with ANZs values as – as part of the feeder into their decision-making process.

This is a panel of who, I'm sorry? This is - - -?---A panel of insolvency providers.

5 So you have a panel, but you talk to them about ANZs values and you require those values to inform the way they conduct their work?---Well, to the extent that it doesn't impinge on their statutory - - -

Yes?--- - - - duties.

10 Yes. And do you know how many of the 30 cases of enforcement action that you've referred to in your statement involved the appointment of a receiver?---No, I don't. Not as I sit here, I don't know. I mean, intuitively, I think a larger number of them are MIPs, mortgagees in possession. But there would be, amongst those, some receivers. And some of those receivers will either be receivers and managers over corporate entities. And some of those might be receivers over freehold land under a  
15 property instrument, as opposed to a mortgage debenture.

You heard the evidence of Mr Wheatcroft from the Rural Financial Counselling Service yesterday?---I was in the room, yes, when - - -

20 Yes. And do you recall his evidence that where receivers are appointed in cases involving agribusiness lending, in his words, it never benefits the client and almost never benefits the bank. Did you hear that evidence?---Yes, I did.

25 And what's your response to that evidence, Mr Steinberg?---I don't agree with it. So the reason that the bank makes that decision is because it has reached a point where it feels that that decision will benefit it in a way, depending on the individual circumstances. I think the other factor to take into account, Ms Orr, is that, in my experience, I've had - or - and become aware of situations where receivers are appointed to a particular enterprise, and the people in the community respond to that  
30 in a favourable way, in the sense that we've had feedback before from suppliers to those particular enterprises, and those suppliers are giving us feedback that once the receiver is in there, they are getting paid for the product or the services that they are delivering. So I will just make that as a - as an additional observation.

35 Did you hear Mr - - -

THE COMMISSIONER: Just a moment. Is that an observation that you've ever encountered in relation to an agribusiness, as distinct from a non-agribusiness?---Yes.

40 What was that case?---Look, it doesn't come to mind now, Commissioner. It's feedback that I'm getting from my staff members.

45 Have you - if we look more generally at external administrators, including in those agents for mortgagee in possession, receivers and managers, liquidators, administrators under deed of company arrangement - I am sure there are other species, but those four species have external administrator. Across the whole range

of businesses with which lending services deals, how often have you encountered a case where an external administrator has conducted the affairs to a point where the bank has been repaid in full?---It's a question that I haven't come here prepared to  
---

5

I understand that?--- - - - answer.

The premise for my question – and you should challenge the premise – is that I think you might count them on the fingers of one hand - - -?---Yes.

10

- - - the cases where an external administrator has gone in and the bank has been paid in full by that external administrator before the administrator has withdrawn?---Yes. So I agree with that. I wouldn't challenge that suggestion.

15

And that if that is the circumstance where the bank is not paid, it is inevitable that the customer will suffer loss. Would you accept that?---In isolation I do, Commissioner. And the only reason I say that is it's currently in our practice, where we have arrangements with our customers who either voluntarily surrender property or invite us to appoint, we sometimes, in some circumstances, will provide them with something to move on with their lives with. So there will be something there that makes it a little bit different to how it would have been done before.

20

But external administrators, if appointed, are appointed in circumstances where a consideration will be stopping greater loss, rather than avoiding loss. Do you accept that?---Yes.

25

Now, apply it to this case. An external administrator was appointed, agent of mortgagee in possession. Is that right?---That's right.

30

Realised the properties in August?---Yes.

At one set of auctions?---I believe so, yes.

35

And what had the customer wanted to do about selling?---The customer was seeking a nine-month extension.

To try to sell in spring. Is that right?---Yes.

40

Before the heat hit?---Yes.

So we're talking a couple of months, are we? Or am I miscounting?---No, I think that's right, Commissioner. But the only piece that I would add into that is that we continue to have the uncertainty in that particular scenario, that we might wait the nine months, then find it doesn't happen, and then find ourselves at the start of the process again.

45

Yes.

MS ORR: Commissioner, I see the time. Despite my best endeavours, I won't be able to complete Mr Steinberg today.

5 THE COMMISSIONER: My interruptions is what you are saying - - -

MS ORR: No, not at all. Not at all.

10 THE COMMISSIONER: - - - Ms Orr. Should be. What's the likely time? I mean, Mr Steinberg needs to stop now. He has had a - - -

MS ORR: Yes.

THE COMMISSIONER: - - - long afternoon, too.

15 MS ORR: Yes.

THE COMMISSIONER: But what's your estimate of time?

20 MS ORR: I think I've got about another hour, Commissioner.

THE COMMISSIONER: Right. Okay. Well, is - - -

25 THE WITNESS: Commissioner, I'm happy to keep going if that's of any help, otherwise I will leave it in your hands. But I will just throw it in there.

THE COMMISSIONER: I was transferring you to the blame for the fact that I'm starting to wilt, Mr Steinberg. Don't deprive me of my excuse. But if we start at 9.45 or 9.30, do you think?

30 MS ORR: I think we can start at 9.45, Commissioner.

THE COMMISSIONER: All right. 9.45 it is.

35 MS ORR: Thank you, Commissioner.

**<THE WITNESS WITHDREW**

**[4.30 pm]**

40 **MATTER ADJOURNED at 4.30 pm UNTIL WEDNESDAY, 27 JUNE 2018**

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