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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-909730

**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**

**9.45 AM, THURSDAY, 28 JUNE 2018**

**Continued from 27.6.18**

**DAY 33**

**MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M.  
HOSKING and MS S. ZELEZNIKOW  
MR A. McGRATH appears for Rabobank  
MR C. SCERRI QC appears for Bankwest and CBA**

<CROSS-EXAMINATION BY MS ORR

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THE COMMISSIONER: Yes, Ms Orr.

10 MS ORR: Mr James, late yesterday I showed you an email from Mark Gray within the credit department to the bank manager dated 17 September 2009?---Yes.

You recall that email?---Yes, I do.

15 Thank you. And having received that email from Mr Gray, the bank manager wrote to the Brauers later on the same day?---That's correct.

Okay. Could I ask you to look at RAL.0002.0003.3198. And just to remind you, the email from Mr Gray to the bank manager was the email in which he had said that:

20 *Serviceability was very hard to get a grip on, and from now until 2012 the request does not work.*

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

25 Thank you. So later that day, the bank manager emails the Brauers, and he says to them:

30 *Sydney have come back to me with a few questions mainly to do with the rental properties and to your living expenses whilst overseas.*

Was that an accurate description of Mr Gray's email?---Yes, I would say it was, yes.

Continuing:

35 *A few questions mainly to do with the rental properties and your living expenses whilst overseas.*

?---Correct. It didn't only centre on the rental properties while they were overseas. It ..... it focused on other areas, I'm sorry.

40

Well, it focused on:

*serviceability being hard to get a grip on and from now until 2012 the request doesn't work.*

45

Didn't it?---That's what he said.

Yes. There's no mention of that in this email, is there?---Not in this email, I'm sorry.

5 No. Instead, the bank manager passed on to the Brauers a series of questions about their income whilst they were in the United States, and questions about their income and expenses for their investment properties?---That's correct.

10 Now, Mr Gray had asked the bank manager quite a large number of questions about cattle numbers, cattle price, cattle sales, and turnover, as well as questions about living expenses, and the matters in this email, hadn't he?---That's correct.

And in this email, the bank manager gave the Brauers no indication that the credit department within the bank had expressed doubts about the lending proposal?---Not in that email.

15 And he didn't tell the Brauers that the credit department had said that:

*The proposal wouldn't work up to 2012 and that the 2013 figures were speculative.*

20 ?---Correct.

To the contrary, we see that the bank manager closed the email by saying to the Brauers:

25 *I think they just need to confirm that the rental properties look after themselves and don't rely on the property for serviceability. Also try to determine the total extent of your individual liabilities.*

30 That was what the bank manager said to the Brauers?---That's correct.

And was that an appropriate way to communicate with the Brauers after the email that the bank manager had received earlier that day from the credit department?---It didn't cover all aspects of the concerns that were raised by the approving manager.

35 Well, it didn't cover the most significant aspects of those concerns, did it?---Not in that email, no.

40 All right. Mrs Brauer responded to that email, and I want to take you to that. But before doing that, I will tender this email, Commissioner.

THE COMMISSIONER: Email to Brauers, 17 September 2009, RAL.0002.0003.3198, exhibit 4.48.

45 **EXHIBIT #4.48 EMAIL TO BRAUERS DATED 17/09/2009 (RAL.0002.0003.3198 )**

MS ORR: Now, could I take you to RAL.002.003.3020. Now, that's exhibit 32 to your statement, Mr James. If it assists I will repeat the number which is RAL.0002.0003.3020. There we have it. Now, the email is a little difficult to read because it contains Mrs Brauer's responses in the body of the email. Do you see that?---Yes, I do.

And we see that Mrs Brauer answered each of the questions that the bank manager had put to her and provided him with the information that he had sought?---Yes, I can see that.

And can I take you to the last bullet point, which we will blow up in the email. In response to a question from the bank manager which was:

*How easy will it be to offload the USA house given the depressed market over there and for how much?*

The response was:

*We live in a popular area. We have the last big eight acre block on the road that we live on. The land that isn't used for housing here is owned mostly by two longstanding entities. We have made improvements to the property and really cleaned it up since we have been here. I know that there is a lot of hype about the depressed market but it – the house and land –*

I think that should be –

*If the house and land is priced right, we shouldn't have any trouble selling it. I know properties with older homes like ours sell quicker than the brand new ones. There certainly is more demand for the older ones as the builders don't need so much money out of them. It could take a few months to sell this property but I am sure that it will sell. I would assume that we could be looking at 220 to 250 thousand.*

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

So Mrs Brauer told the bank manager that they expected to receive 220 to 250 thousand for the sale of the house they had in America?---Yes, I can see that.

And you will recall that yesterday we spoke about the bank manager's projection in the credit submission that \$660,000 would be needed for cattle purchases on the Brauers' return to Australia in 2011?---That's correct.

And the bank manager in the credit submission noted that this was going to come from farm management deposits and the sale of the property in America?---Are you referring to the entire 660 coming from those sources?

Yes, that was what the credit submission said, wasn't it?---My understanding was that the credit submission as proposed also included 300,000 from the bank for that purpose.

5 I see. I see. So you agreed with me yesterday that 513,000 would be needed in cleared funds after the farm management deposits were used. Do you recall that?---I don't recall that figure.

That's all right?---Okay. But if that's what it said, I – I understand.

10

Yes. And it's clear from what Mrs Brauer told the bank manager that there was no prospect of the Brauers finding anything like that from their own funds. They needed the 300,000 from the bank, didn't they?---I recall seeing that.

15 So on Mrs Brauer's best estimates, the sale price before costs wouldn't even raise half the amount that they needed to stock the properties on their return?---Not from that source, no.

20 Okay. I don't need to tender that email. You have that email in your statement. Can I take you to one that I will tender, which is the email from the bank manager to Mr Gray three days later on 21 September. That's RAL.0002.0003.1490. Now, in this email, which is the bank manager's response to the person from the credit department – that's right?---Yes.

25 Having had the exchange with Mrs Brauer that we've just seen?---Yes.

The bank manager amended some of his initial assumptions about cattle, but he defended others. Do you agree with that?---Yes, I do.

30 So, for example, in the last dot point on this page – if we could have the subsequent page brought up on the other side, that would assist – he recognised that he had underestimated the number of bulls required, and he agreed that another 10 to 15 bulls would be required and he estimated a cost of 2500 per bull?---That's correct.

35 And in the second last dot point on the first page, he copied the information provided by Mrs Brauer about the likely sale price of the home in the United States?---That's correct.

40 And on the second page, we see that in the fifth last bullet point – so if we go to five up from the bottom:

*What are the specific details –*

45 If we could have this blown up it would be useful –

*What are the specific details of lease arrangements, and what assumptions are there behind substituting agistment income if the vendor moves off shortly?*

?---Yes.

And the answer that the bank manager gave the credit department to that question was that:

5

*The Kia-Ora lease expires on 31 March 2011 with a two year option from that date. Annual amount of 200,000 paid quarterly in advance. The lease has been perused by legal. Parties have agreed upon a one plus one year lease for Jamberoo at 175,000 as part of the purchase agreement. This is still to be*

10

*finalised as with all other property title and survey details.*

So this was the bank manager's response to the matters raised by the credit department?---Correct.

15 Thank you. I tender that document.

THE COMMISSIONER: Email to Gray, 21 September 2009, RAL.0002.0003.1490, exhibit 4.49.

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**EXHIBIT #4.49 EMAIL TO GRAY DATED 21/09/2009 (RAL.0002.0003.1490)**

25 MS ORR: And the following day, the bank manager wrote back to the Brauers. If I could take you to RAL.0002.0003.1645. Now, at this point, on 22 September, the bank manager says to the Brauers in the first paragraph:

30

*There has been a bit of back and forth discussion with Sydney but it would appear that we will get an approval for the property purchase, although not officially approved as yet.*

And in the second paragraph:

35

*Sydney are of the opinion that we should reassess the initial limit of the loan and look to utilise some of the available funds now rather than retain them for livestock purchases when you are looking to return to full control of Kia-Ora. So on that basis, they would provide a facility of 3.7 million. Refinance the main loan –*

40 Which was the million dollar loan:

45

*... at approximately 800,000 balance with an additional 2.9 million for the property purchase at this stage. The 200,000 facility remains in place making 3.7 plus 200, total facilities of 3.9. Then in March 2011 when the lease expires provide an increase for livestock purchases based on your plans and the cattle market at that time.*

?---Yes.

And until this point, the proposal had always been for facility limits of 4.2 million?---Correct.

5

But now the total facility limit of 3.9 million is proposed, and the situation was that the existing \$200,000 facility was to remain in place?---In the personal names, correct.

10 Yes. And the undrawn portion of the existing \$1 million facility was to be cancelled with that becoming an \$800,000 facility?---No, with that becoming a \$200,000 facility, I understand, and then the balance being transferred across to the loan in the company name. To make a total – I’m sorry.

15 Yes, carry on, Mr James?---Excuse me. So my understanding is that the residual from the joint borrowings, the \$800,000, was to transfer into the company.

Yes?---To be added to the acquisition of Jamberoo.

20 Yes?---Sorry, is that what you were saying?

Yes, it was?---I’m sorry. Apologies.

25 So it became an \$800,000 facility, and the 200,000 was still in place in the personal names, and so rather than \$3 million for the purchase of the property, only 2.9 was to be extended. Is that right?---No, it’s not as I understand it, I’m sorry.

Right. So could you explain what this sentence means about:

30 *On that basis they would provide a facility of 3.7, refinance the main loan at 800 balance with an additional 2.9 for the property purchase.*

?---Yes. My understanding is that the \$3.7 million limit that was to be created for the company incorporated the \$2.9 million increase to acquire Jamberoo.

35

Yes?---The 800,000 you’re referring to was to be added to that figure and become one loan for 3.7 million.

Yes?---The residual debt was to remain in joint names of \$200,000.

40

When you say the residual debt - - -?---I’m sorry.

- - - are you referring to the existing \$200,000 facility?---Correct.

45 The separate \$200,000 facility?---Correct.

That's what I'm trying to understand. They had a \$200,000 facility and they had a 1 million facility?---Yes.

5 And in this new loan that \$1 million was only going to be \$800,000, and then there was going to be 2.9 added to it. So 2.9 plus 800 gives us the 3.7, and they kept their \$200,000 facility?---That's correct.

Good. Thank you. Now, I read to you before the sentence which was:

10 *In March 2011 when the lease expires, the bank will provide an increase for livestock purchases based on your plans and the cattle market at that time.*

?---Yes.

15 Now, you accept that this email was read by the Brauers as an assurance from the bank that further funds would be provided by the bank in March 2011 for livestock purchases?---I understand that it would have been interpreted that way, yes.

20 You understand it would have been interpreted that way?---I can't be certain because I wasn't interpreting it myself but I think it would be reasonable to think that Mr and Mrs Brauer would have interpreted it that way.

Is there any other interpretation of it, Mr James:

25 *In March 2011 when the lease expires, provide an increase for livestock purchases based on your plans, and the cattle market at the time.*

30 ?---Yes. My only – my only thoughts on that when I read that, whilst respecting the position that Mr and Mrs Brauer would have taken in reading it, was that there was earlier reference to them being able to potentially stock the properties from their own reserves.

35 But it was clear by this point that they couldn't stock the properties from their own reserves?---I hadn't done the calculations between when that assumption was made and this.

40 From all of the documents we've gone to, it's patently clear, isn't it, that they didn't have the money to stock the properties upon their return to Australia without the further money from the bank?---The earlier representation indicated that – that that was possible. And the – and the sources that that was to come from were from the sale of the US property.

Yes, which was we've seen was 220 to 250 thousand?---That's right.

45 And they had 147,000 in farm management deposits?---That's correct.

So they didn't have enough money to stock the properties on their return without funding from the bank, did they?---I – I can't confirm that, I'm sorry, because also in that – in that comment from Mr and Mrs Brauer or from Mrs Brauer was that we could also source funds from other sources, now I wasn't certain in reading that  
5 whether it was equity from the sale of some of the several investment properties they owned or not, I'm not – I'm not certain. That was referenced in that prior communication. Having said that, I do acknowledge that that is a reasonable representation that we would assist them in the future.

10 A reasonable - - -?---I think so.

- - - interpretation?---I think so. Interpretation.

15 Is that what you mean?---Yes, I agree with that.

Yes. Thank you. Okay. You agree with that now but you didn't originally agree with that in your statement to the Commission, did you, Mr James?---No, I didn't. No.

20 No. In the first version of your statement that you provided to the Commission, you disputed Mrs Brauer's assertion that further funds had been anticipated by the Brauers at the time that the purchase of Jamberoo was being considered?---I did, yes.

25 So what has made you change your mind, Mr James?---Well, after my first statement I continued to reflect and continued to consult. I spoke to the approving manager. I spoke to the – the subsequent manager who – who was looking after the file, and my understanding grew as I went, and – and that was the conclusion I came to. I didn't stop reviewing the file after I had signed my statement.

30 Thank you, Mr James. I tender that document, Commissioner.

THE COMMISSIONER: Email to Brauers 22 September 2009, RAL.0002.0003.1645, exhibit 4.50.

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**EXHIBIT #4.50 EMAIL TO BRAUERS DATED 22/09/2009  
(RAL.0002.0003.1645)**

40 MS ORR: Now, you said in answer to one of my questions earlier – perhaps twice you said this, Mr James – when I asked you if an earlier email drew the Brauers' attention to the credit department's view that – I want to make sure I put this correctly – that serviceability was hard:

45 *... very hard to get a grip on and from now until 2012 the request doesn't work, and most of the 2013 assessment is hypothetical.*

I asked you about that and I think twice you said “not in this email”. Is there any email in which those matters were brought to the attention of the Brauers?---Could you repeat that, I’m sorry?

5 Yes. So the – I put to you earlier that one of the fundamental concerns expressed by the credit department in the email with the bank manager was that serviceability didn’t work under this proposal?---Yes.

10 Now, I asked you if in the earlier emails that was drawn to the attention of the Brauers, and you said it wasn’t, not in those emails. I just want to give you an opportunity to identify if there is any other email where you say that was drawn to the attention of the Brauers?---Yes. No, it wasn’t drawn to the attention of the Brauers from what I could see.

15 Thank you?---There was context with my comment but it wasn’t brought to the attention of the Brauers.

They were never told that were they?---No, they weren’t.

20 And should they have been told that, Mr James?---I believe so.

25 Yes. Now, having received this email on 22 September telling them that approval is coming, even though it hasn’t officially been approved, the following day we know from exhibit 37 to your statement that the bank manager told the Brauers that the limit of 3.7 million had been approved. Is that right? Now, you tell us in the second statement that you gave the Commission that you – you have now reviewed all of the documents relating to the credit assessment and approval of the facility for Jamberoo?---Yes.

30 And in that second statement that you gave to the Commission on Friday last week, you said that you had now formed the view that the proposal for the acquisition of Jamberoo, which involved the leasing of both properties, Kia-Ora and Jamberoo, until the Brauers returned from America and commence their livestock purchases in March 2011, was not one which would enable them to service interest on the  
35 proposed facility?---That’s correct.

You now accept that?---I do accept that.

40 And you accept that the Brauers made clear that they did not propose to lease the properties for the foreseeable future. They only proposed to lease them until they returned home and started building cattle numbers to the full running capacity of the properties?---Yes, but I – I do need to explain my thinking process on that if you don’t mind.

45 Yes, please?---So my – my original thoughts on that centred on, again, the communication between Mrs Brauer and – and the account manager at the time, and

it did reference in one of those emails that the properties could be leased upon their return. I believe that – the context of that was not to be leased indefinitely.

No, it wasn't, was it?---I understand that.

5

It was always clear that they were leasing until they could stock the properties until – to their full capacity?---That's correct.

Yes?---And my original assessment of that was that – was not that, I should say. It was that there was potential for Mr and Mrs Brauer to return and continue to lease the properties until they could stock them. But as I reviewed this and as I studied the correspondence and as I spoke to the approving manager and as I spoke to the subsequent manager – account manager, my view altered, and – and I came to understand the expectations of Mr and Mrs Brauer.

10  
15

Well, you came to understand that this was never a serviceable loan, didn't you?---In the context it was submitted, no.

Yes. It was never a serviceable loan. Is that the answer? I just want to understand what your no to that question meant Mr James?---Yes. Okay. I'm sorry, I am not trying to be evasive. It is important that I explain.

20

No, I am not suggesting that?---There were two components of serviceability with the loan and the component of serviceability that was centred on running the operation is a cattle operation with Mr and Mrs Brauer's own cattle. It was very difficult to establish serviceability on that basis. That was the basis with which it was proposed, and I understand and respect the fact that that was the basis on which Mr and Mrs Brauer expected to have an approval. There was a second assessment within the component of that submission that the credit manager undertook prudently to say that the business could service the – the exposure on a lease arrangement.

25  
30

Yes?---But the expectation of the Brauers was not to continue to lease it, and that is where my – my view has changed on this, as I've reviewed the file.

Yes. So it was clear to everyone at the time that they didn't intend to lease for the foreseeable future. Therefore, that second basis of serviceability wasn't available, was it?---No, it wasn't.

35

Thank you?---Certainly not without communication with Mr and Mrs Brauer.

40

Not without them changing their plans?---I understand.

Yes. Now, you also say in your statement that even if the Brauers were able to build cattle numbers to the full running capacity of the properties from their own financial resources, the proposed facility still couldn't have been serviced?---On the calculations I did, no.

45

Yes. And in those circumstances, the conduct of the bank in approving the facility without telling the Brauers that it could not be serviced if they ran both properties fell below community standards and expectations. You concede that?---I do. On the basis of fairness.

5

Yes. You say in your statement that it was in accordance with the expectations the Brauers had for servicing the proposed facility by leasing the properties for a short period only and in that sense it was, you say, unfair to them?---I believe so.

10 Yes. And you also say in your statement that, therefore, it may also have been in breach of the Code of Banking Practice, and, therefore, be characterised as misconduct?---It may be.

Is it?---Well, if I read it to the letter, I believe it is.

15

If you read what to the letter, Mr James?---The code.

20 Yes. And at that time, clause 2.2 of the code obliged Rabobank to act fairly and reasonably – you may have heard me read this clause a number of times over the last few days – act fairly and reasonably towards the Brauers in a consistent and ethical manner?---Yes.

You accept that Rabobank breached that obligation?---In the context of the fairness aspect of it, yes.

25

Yes. Thank you. Now, can I ask you to consider another clause of the banking Code of Practice. If we could have this brought up on the screen, RCD.9999.0035.0014. Could I ask you to consider clause 25.1:

30 *Before we offer or give you a credit facility or increase an existing credit facility, we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and informing our opinion about your ability to repay it.*

35 ?---Yes.

Rabobank also breached this provision of the Code of Banking Practice, didn't they - - -?---I believe so.

40 - - - Mr James?---I believe so.

You accept that? Now, at the point the offer of the facilities was made, it was reasonable for the Brauers to believe that they had the trust and support of their bank manager and, therefore, of the bank, wasn't it?---I believe so.

45

And you've accepted that it was the bank manager who first told the Brauers that Jamberoo was for sale?---That's correct.

And in the very first email communication he had with them about Jamberoo, he estimated a price for the block, the entire block, of \$4 million?---He had mentioned that price, yes.

5 And he then valued the block at \$4 million?---Which reflected the contract price, correct.

Yes. And at the time of that first communication with the Brauers, they were already clients of Rabobank and Rabobank was well aware of their financial  
10 position?---That's correct.

There could never have been any doubt that the expansion of their operations was a long-term proposition, could there?---On the basis submitted, no.

15 And that cash flow would be very difficult in the early phase?---Correct.

And the Brauers were entitled to think that Rabobank was supporting them in their expansion of their operations?---That's correct.

20 Okay. Now, the ultimate purchase price that was agreed for the Brauers' portion of Jamberoo was roughly \$2.84 million?---Correct.

And the Brauers entered into a contract of sale in July 2009?---That's correct.

25 And in January 2010, the bank sent them a letter of offer for a new all in one account with a loan limit of 3.7 million?---Correct.

And that represented the 2.9 million for the purchase and the 800,000 as a refinance of the existing \$1 million facility?---That's correct.

30 Okay. And that facility, the new all in one account, was to expire on 30 June 2024?---I don't recall the expiry date but if that is in the document, yes.

15 year term was standard, was it?---That's correct.

35 Would you like me just to show you that document or are you happy to accept that was the term?---No, I'm happy to accept that.

Thank you. Then due to delays in the subdivision of the block which you heard Mrs Brauer give evidence about, the sale didn't complete until August 2010?---That's  
40 correct.

And given that settlement took more than 12 months, was a revised credit submission done prior to settlement?---No, it wasn't.

45 Was the previous credit submission reviewed by the credit department again?---The credit department reviewed the decision in the subsequent approval when the \$3.7

million – when the letter of offer issued, it had been reviewed but after that letter of offer had issued, no, it hadn't, no. So I'm sorry not between the time when that letter of offer issued and then.

5 Yes, over that - - -?---No.

- - - extended period, the 12 months prior to settlement, there was no fresh credit submission, nor any review of the existing credit submission?---Not that I'm aware of.

10

And should there have been?---Yes, I believe so.

Right. So why didn't that happen?---I can't answer that, I'm sorry.

15 Okay. And during that period there were further discussions between the bank manager and Mrs Brauer?---There would have been, yes.

20 Yes. And I want to show you an email, which is an email from Mrs Brauer to the bank manager on 3 June 2010. So this is about seven months after the loan has been approved?---Yes.

25 RAL.0002.0003.1549. Now – sorry, I will just wait for that to come up. Now, if we could turn to the subsequent page, 1550. This is an email chain. You will see an email from the Brauers on 3 June 2010 to the bank manager:

*Hi, how's things. Just checking that everything is getting done for the settlement on Jamberoo. I am needing a little refreshment on the 3.7 million that is unfunded. Is this the amount of the total loan or will that amount be enough to cover all the stamp duty, legals, etcetera, for this purchase.*

30

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

And in response at 1549, the bank manager tells the Brauers in the first line there:

35 *I'm pretty sure that the original intent was for us to fund the property purchase and you would pay the stamp duty and legals from available funds, being FMDs and investments.*

40 You see that?---Yes, that's in accordance with an earlier email between the two parties before settlement.

Well - - -?---Before the approval.

45 It wasn't the original intent, was it?---During – in correspondence, from my recollection, between Mrs Brauer and the account manager, there was reference made to stamp duty and the account manager believed that that was going to be paid for - - -

Well, we saw - - -?--- - - - out of reserves.

We saw the reference to stamp duty in an earlier email I took you to where there's an analysis of income, expenses and available funds, and then a reference to about  
5 \$120,000 of stamp duty. Is that the email you were referring to?---Yes.

Yes. So there's certainly a reference to stamp duty in there, but there was no reference to that being paid out of the Brauers' existing funds, was there?---No, it wasn't. Nor was there reference to that being paid in the approval letter.  
10

Well, in the credit submission that I took you to earlier, the bank manager had identified the farm management deposits as one of the two sources of funding for the cattle purchases when the Brauers came back?---As well as the equity from the sale of the property, yes, correct.  
15

So he can't have also been thinking that they were going to be used to pay the stamp duty and the legals?---I'm sorry, I can't assume what he was thinking but the credit approval did not include - - -

20 Yes?--- - - - coverage for the payment of stamp duty for \$120,000.

All right?---It was clearly not stated in there.

And I'm just querying this statement about the original intent that I've taken you to  
25 in this sentence. We see that the bank manager says in this email that:

*At the time of the original submission, there was well over \$200,000 available in the main loan. But because this has taken much longer than anticipated, the balance has come back a bit.*

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

And now an extra \$40,000 is required to go towards the purchase price?---Yes, I see that.  
35

And the bank manager set out his understanding of the funds available to the Brauers:

*You currently have the following funds available. In the million dollar facility, 103,000, in the \$200,000 facility, 67,000, and a credit only account of 31,000. So that's a total of \$202,146.*  
40

?---Yes.

45 But there wasn't 103,000 available in the million dollar facility, was there?---No, there wasn't.

Because the total borrowing that had been offered and accepted was the 3.9 which comprised the 200, and the 800 that was the refinancing of the million dollar facility?---That's correct.

5 Plus the 2.9 to buy Jamberoo?---That's correct.

So there was no amount available for drawdown on the million dollar – the old million dollar facility, was there?---There would have been the difference between – no, there wouldn't have because the limit was to have been readjusted - - -

10

It was gone?--- - - - to 800,000.

It had become an \$800,000 facility subsumed in the new \$3.7 million facility?---Drawn to nearly 900,000. That's correct.

15

Yes?---Over that 12 month period.

Yes. So is it the case that what happened was the million dollar facility wasn't paid out at the time the loan was accepted, but continued to be available to the Brauers for their use and to continue to accrue interest?---Absolutely, and that would have been the intention.

20

Well, as a consequence of that, instead of requiring 800,000 to repay the facility, more would be required?---Because of the utilisation of those funds for the business during that period.

25

That's right?---Ms Orr, could I point out - - -

Yes?--- - - - that even had the circumstance come about that you suggest, those funds still would have been utilised even if they were in the main loan but the main loan couldn't be established at that time because the additional collateral wasn't available through Jamberoo because the property hadn't settled at that period. So it would always be the case that the settlement would happen when the property transfer was effected.

30

35

So is that why Rabobank didn't pay out the million dollar loan immediately after it was refinanced down to \$800,000?---That's correct.

Okay?---From the utilisation of those funds, from what I can see, reviewing cash flows, would have been utilised had those funds been in the main loan, or had they been in the new entity.

40

So given that there was considerable delay in the settlement, it was reasonable for the Brauers to continue to use the million dollar facility?---Of course. Yes.

45

And was it reasonable for them to assume that the facility would be paid out by the new loan?---Providing there were available funds there.

Well - - -?---After trading, yes.

Well, that's what they had intended from the outset, wasn't it?---That's correct.

5 And they had applied to draw that facility to its limit. You will recall that. But Rabobank had decided to limit the facility to its balance at the time of the credit application. That's the 800,000?---That's right. Well, 896,000 ultimately, yes.

10 Well, there's a difference. It becomes 896,000 because of the passage of time, doesn't it?---Exactly.

15 Well, do you think this might have been quite confusing for the Brauers, Mr James? You've refinanced the million dollar facility down to an \$800,000 facility, but you've continued to allow them to use it as if it's a million dollar facility?---I'm not at odds with that process.

20 No, but what I want to put to you is that that must have been very confusing for the Brauers, and it was clearly confusing to your bank manager?---I'm sorry, I can't speak for the Brauers. I can't understand – I can't speak to what level of confusion or understanding they would have had with that. However, I will – I will volunteer that this is why we should have done a review of the - - -

Exactly?--- - - - facility.

25 Exactly?---I understand that.

30 Now, at the time the bank manager sent this email in June 2010, he assumed that the Brauers still had the right to use the funds that weren't drawn down on the million dollar facility at the time it was refinanced to an \$800,000 facility?---That's correct.

Okay. And he told the Brauers, incorrectly, that they had \$103,000 available to them from that million dollar facility?---He had done the calculation between the original limit of a million and the subsequent limit of 800, I would suggest.

35 Yes. All right. I tender that email, Commissioner.

THE COMMISSIONER: Email from Brauers to Rabobank, 3 June 2010, RAL.0002.0003.1549, exhibit 4.51.

40

**EXHIBIT #4.51 EMAIL FROM BRAUERS TO RABOBANK DATED 03/06/2010 (RAL.0002.0003.1549)**

45 MS ORR: And then in August 2010, can I take you to an email sent by another Rabobank employee to the bank manager who on-forwarded it to the Brauers. That's RAL.0002.0003.3469. And can I ask you to turn to the email in the chain on 3470,

where we see an email from Tiffany Jorgenson to the bank manager on 19 August 2010?---Yes.

5 And we see there that Ms Jorgenson set out the funds required to fund the property settlement. So this is right before the settlement is due to take place?---Yes.

And they don't appear to include stamp duty there?---No, they don't.

10 So she sets out the funds that are needed as being 2.79 million. You see that?---Yes, I do.

15 And she then notes that the refinance of the \$1 million facility is to take place, and she sets out the balance of that facility, which is 974,387 plus interest, which took the total amount owing on that facility to 983?---Yes.

So it followed that 3.77 million was required for the settlement of Jamberoo?---That's correct.

20 And she set out the funds that were available for settlement, and that was the new 3.7 facility, about \$6000 that was undrawn on the 200,000 personal names facility, and another \$4000 from another account?---That's correct.

25 So that meant that even fully drawing on the new facility, the Brauers had to find another \$62,651 to complete the purchase?---That's correct.

And then at 3470, having had that email forwarded on to her, Mrs Brauer responds at the top of the page:

30 *I transferred 50,000 from my farm management deposit to the Shay Tim account. Will this be enough money to cover everything? I thought that we were only coming up 26,000 short? Am I confused?*

?---Yes, I see that.

35 Okay. So you can see from that that Mrs Brauer was a little confused by all of this. And if we move to 3469, we see that Mrs Brauer speaks of having the undrawn balance of the \$1 million facility available as a back-up. Do you see that?---I'm trying to get the thread, I'm sorry.

40 In the middle of the page?---I see.

But that facility was going to be closed?---Yes.

45 So it seems that Mrs Brauer was labouring under the misconception that the original proposal which included fully drawing the \$1 million facility before it was refinanced, was in fact what had been agreed to?---I can see that, yes.

Which would explain their – the Brauers’ continued use of that facility in the period between – agreeing to the letters of offer and the much later settlement of the property?---That’s correct.

5 And can you see then the relation – the bank manager’s response at the top of the page:

10 *Sorry, probably didn’t explain that well enough. The refinance amount of the \$1 million facility was at 975,000 (round figure). If we had drawn on the 25,000 available to help with the property purchase, then the refinance amount would have been 1 million. So either way, it works out the same. We did a calculation on the basis that those funds were available when really they weren’t.*

15 ?---Yes. It became very confusing over that 12 month period, it appears.

Well, why was he doing calculations on the basis of funds that were available that were not available to the Brauers?---Are you talking about from the outset when the assessment was done?

20 I’m talking about – well, there’s multiple periods at which we could ask that question, isn’t there, Mr James?---Well, again, I – yes, there are. And I come back to – to the point that when the original assessment was done was 12 months before the settlement. Lots had transpired between that period. But we ought to have done a review.

25 And communicated consistently with the Brauers about what funds were and were not available to them?---Central to the entire issue.

30 And you did not do that?---I don’t believe we did that adequately in this case, no.

35 So at the very minimum, the bank manager communicated inconsistently with the Brauers about their ability to use the undrawn portion of the million dollar original facility?---I believe there was confusion with that, and – and – and poor communication, yes.

Poor communication. And we see in this email that the bank manager says – after saying that we did a calculation on the basis that those funds were available when they weren’t – really they weren’t:

40 *Hope that’s a bit clearer. You definitely don’t lose the 25,000.*

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

45 But they definitely did lose the use of the 25,000, didn’t they?---They did after settlement, yes.

Yes. It was gone?---Before settlement they hadn't but they did after settlement, yes.

Yes. But that part – that undrawn part of the million dollar facility after settlement was lost, wasn't it?---Because the fresh limit was 800,000, correct.

5

That's right. Contrary to what the bank manager told them?---Yes.

And the only way the Jamberoo purchase could settle was if the Brauers paid for stamp duty and legal fees from other funds, and used part of the 2.9 million that had been set aside for the purchase of Jamberoo to repay the \$1 million facility?---That was the outcome.

10

Was that an acceptable outcome, Mr James?---Well, in the scheme of the settlement and – and the shortfall, no.

15

And it necessarily meant that the \$3.7 million facility was fully drawn from the moment it was put in place, and there were no funds available to meet expenses associated with either the purchase or the stocking of the property when the Brauers returned?---Not from leveraged capital, no.

20

And it meant that the Brauers' farm management deposit account was reduced to effect the settlement?---That's correct.

That being one of the two sources of funding that had been identified for the restocking from the Brauers' own funds when they returned to Australia?---That was one of the sources that had been identified, correct.

25

Wasn't the reality that from the time the property settled, even if things had travelled entirely in accordance with the plan, in that the American house had sold for the value that Mrs Brauer had ascribed to it, and the rental payments on Kia-Ora and Jamberoo came in as expected, the prospects of the Brauers servicing the new facility and meeting the expenditure that would be required to get the properties working, was virtually nil?---I think the original assessment on that scenario with the property stocked, as I said earlier, was for mine not going to be sustainable. And I need to – I'm sorry, I need to break it – to give a full understanding and for completeness, to break it into – into two – but I must also respect that Mr and Mrs Brauer's understanding was different – but the thinking behind it was purely to fund the acquisition of the properties to lease until such time as they returned, then make a reassessment. The email that was sent was sent without the authority of the approving person, in terms of stocking the property into the future. So to answer your question, no, it would not have stood as an economic proposition stocked. As a lease position for an interim period, to enable Mr and Mrs Brauer to acquire Jamberoo, yes, as a hold position, I believe it would have. But that was not the intention, I understand.

30

35

40

45

It was entirely predictable that the Brauers would have cash flow difficulties, wasn't it?---Well, it became that way.

Yes?---It became - - -

I want to come to that - - -?---Sorry, yes.

5 - - - but first I would just like you to consider whether it was predictable that that was what was going to happen?---Well, that's a good question and one that I'm going to find difficult to answer because I couldn't predict it at that time and it then goes to the whole hindsight scenario that I've struggled with.

10 Why couldn't you predict it at the time based on all that we have seen, Mr James?---Well, I am talking about the scenario of being able to acquire the properties and lease them. That was predictable, yes.

15 But wasn't it obvious, having fully drawn down the new facility, and already having dipped into the farm management deposits to pay stamp duty and legals, that there were immediately going to be cash flow difficulties?---That became evident, yes. I'm sorry, I thought your question was at the approval.

20 I just want to be very clear about this. It was evident right from the time of the first credit memorandum?---On that scenario, yes, yes.

On which scenario?---On the scenario that was before the bank.

25 On the real scenario on what was going to happen?---Yes, yes.

Yes, thank you. I tender this email chain, Commissioner.

30 THE COMMISSIONER: Emails to Brauers, August 2010, RAL.0002.0003.3469, exhibit 4.52.

**EXHIBIT #4.52 EMAILS TO BRAUERS, AUGUST 2010  
(RAL.0002.0003.3469)**

35 MS ORR: Now, the cash flow difficulties became apparent very quickly, didn't they, Mr James?---They did.

40 And in September 2010 we see an email from Mrs Brauer to the bank manager which is RAL.0002.0003.3106. And if I could ask you to look at the email towards the bottom of the page, and if we could blow that up, you will see that it's an email from the Brauers to the bank manager on 17 September. Mrs Brauer says:

45 *It has come to my attention that the interest for the July/September quarter may be coming out of our account in a few weeks. There won't be enough to cover it, unless I transfer more money out of our farm management deposits. I had hoped to avoid that scenario. Was it the bank's intention that Adrian and I*

*drain our farm management deposits? Anyway, is there something that you can do to put the payment back until mid-September when the lease payment money has come in. Thanks, Wendy.*

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

And in response, we see the bank manager propose two options that would avoid the need to further draw down from the farm management deposits?---Yes.

10 And the discussion of this issue continued for a number of weeks. Have you seen that in the documents?---Yes, I have.

I tender this email chain, Commissioner.

15 THE COMMISSIONER: Email from Brauer 17 September 2010, RAL.0002.0003.3106, exhibit 4.53.

20 **EXHIBIT #4.53 EMAIL FROM BRAUER DATED 17/09/2010 (RAL.0002.0003.3106)**

MS ORR: And if we turn to RAL.0002.0003.3094, and we look at the first email in that chain at 3095, this is 25 September. And if we could blow up that red text, Mrs Brauer says to the bank manager:

30 *I'm not sure what to do about rearranging the timing of this payment of interest. We don't really want a six month situation and would prefer quarterly. But with the way the cash is flowing, we need the payment to be at the end of the month (first month of quarter) for the cash to be in the account. Can we do something like that? I know that means that the quarters are going to be off for a little while but we have to build up some reserves as well as pay the bills for a little while. What do you think?*

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

And then if we turn to 3094, we see that there's a discussion about how the Brauers can judge things to make the interest payment of 24,500 that's going to fall due at the end of the month?---Yes, I do.

40 So it's clear in September 2010 that there are real cash flow issues already for the Brauers?---Yes, I can.

45 And this is only one month after the new facility has been put in place in August 2010?---That's correct.

And by the end of that year, the Brauers were having real difficulties servicing the loan, weren't they?---Yes, they were.

5 They were entirely dependent on lease payments to service the loan, and without the loan interest payments being coordinated with the timing of the receipt of those lease payments, they couldn't service it, could they?---Not without additional cash injections.

10 And would Rabobank expect their bank manager to take any particular steps in those circumstances, where they're experiencing these difficulties?---I – I would – I would hope that there was some – some investigation done at the time on the catalyst for the circumstances so early in, and I can't speculate as to why not, I'm sorry.

15 I'm sorry, you said you would hope that there was?---I would hope that there was some investigation done into the catalyst for that occurrence.

Yes?---And I can't comment as to whether or not there was.

20 You've seen nothing to suggest that there was any investigation done at that time?---That's correct.

I see. I tender this email, Commissioner.

25 THE COMMISSIONER: Emails of 25 September 2010 from the Brauers RAL.0002.0003.3094, exhibit 4.54.

**EXHIBIT #4.54 EMAILS FROM THE BRAUERS DATED 25/09/2010  
(RAL.0002.0003.3094)**

30

MS ORR: And then by January the following year in 2011, there had been very severe floods in the region where the properties were located?---Yes, there had.

35 And did you hear me read out the email that Mrs Brauer sent to the bank manager after becoming aware that the lessee of Kia-Ora was going to terminate the lease as a result of those floods?---Yes, I did.

40 And did you – do you agree that the Brauers did the right thing by contacting their bank manager immediately, and notifying him of the difficulties that they now faced?---Yes, I do.

45 And Rabobank was always aware that the primary source of income for the Brauers while they were in the United States, and even in the initial year of their return, was the income from the leases?---That's a reasonable assumption, yes.

Yes. And it appears from the email that Mrs Brauer sent that the difficulties they experienced at that time were caused, to some degree, perhaps primarily, by a natural disaster?---That's correct.

5 And did Rabobank support the Brauers to deal with the consequences of this natural disaster?---There was an email from the account manager in response to Mrs Brauer that did point out some assistance available through government funding.

Yes. Yes, there is. And can I show you another email as well, which is  
10 RAL.0002.0003.2646. Now, this email contains the – at the bottom of the page, the email that I read out from Mrs Brauer yesterday. And we see the bank manager's response to that email at the top of the page?---Yes, I've read that response.

And you can see that he says in the second last paragraph:

15 *I'm sorry to hear about the lease, particularly when there was no notice. I'm just wondering if Neil might still be an interested party as I think he still wants to get his breeder numbers up. You might have already approached him?*

20 And then he goes on at the bottom of that email to say:

*Stay in touch and we will work out some sort of strategy. The bank is taking some pretty relaxed attitudes towards increases required directly as a result of the floods.*

25 ?---That's correct.

I tender that email, Commissioner.

30 THE COMMISSIONER: Emails 14 January 2011 between Brauers and Rabobank, RAL.0002.0003.2646, exhibit 4.55.

35 **EXHIBIT #4.55 EMAILS BETWEEN BRAUERS AND RABOBANK DATED 14/01/2011 (RAL.0002.0003.2646)**

MS ORR: And to assist you, Mr James, can I also take you to  
40 RAL.0002.0003.3492. I think that may be the email you were referring to where information was provided by the bank manager about forms of government assistance?---Yes, that's correct.

For the disaster. Is that right?---Yes, that's correct.

45 I will tender that email, too. But going back - - -

THE COMMISSIONER: Just a moment, email from Rabobank 14 January 2011 concerning flood assistance –

MS ORR: Going back to the - - -

5

THE COMMISSIONER: Just a moment, RAL.0002.0003.3492, exhibit 4.56.

10 **EXHIBIT #4.56 EMAIL FROM RABOBANK DATED 14/01/2011  
(RAL.0002.0003.3492)**

MS ORR: I'm sorry, Commissioner. As you can tell - - -

15 THE COMMISSIONER: I'm not even saying get on with it, Ms Orr.

MS ORR: I've got my time limit I have to stick to, having announced it yesterday, Commissioner. I wanted to take you back to the first of those two emails. They're both on the same day, 14 January, and just to that final part, I will read it to you again:

20

*The bank is taking some pretty relaxed attitudes towards increases required directly as a result of the floods.*

25 Now, what I want to put to you is that as it turned out, the bank didn't take a relaxed attitude towards the increase to the facility that the Brauers required upon their return to Australia?---I'm sorry, you will have to explain what you mean by take a relaxed attitude?

30 Well, they didn't give it to them?---We did. We provided the \$300,000.

Provided the 300,000 on condition that within two years the Brauers make a repayment of \$3 million?---That's correct.

35 Right. That's not taking a relaxed attitude towards the request for the \$300,000, is it?---I – I don't have an opinion on whether that's relaxed or not. I'm sorry. I just don't.

I see?---If I did, I would give it, but I don't.

40

I understand. At this time when the Brauers come back to Australia, they have been clients of Rabobank since 2005?---That's correct.

They had never defaulted?---No.

45

And only months prior, Rabobank has financed their acquisition of Jamberoo?---That's correct.

And Rabobank, at the time of acquisition, knew that lease income was critical to the proposal working?---That's correct.

5 And now Rabobank has been told that the lease has been terminated as a result of a natural disaster?---That's correct.

10 So shouldn't Rabobank have at least considered whether the terms of the facility should be altered in a way that at least gave interim relief to the Brauers until they were back on their feet and getting the properties operational?---The position certainly should have been reviewed.

And was it?---I could see no evidence of it.

15 All right. So the Brauers returned to Australia - - -

THE COMMISSIONER: It should have been reviewed at what level in the bank?---I believe it should have been put back before the credit department of the bank for consideration.

20 Yes. And was it, to yield this notion of you can have 300 if you pay us back 3 million in two years?---That position was, Commissioner. The ultimate approval that came was through the credit department on that review, yes.

25 Well, I'm just not then – I think I'm not understanding what you're telling me. What should have been considered by the bank?---The position that – I'm sorry, I may have been a step behind Ms Orr. My – my comment to there was no review done was when the disaster struck. At that point I think it would have been prudent for a review to have been done on the file and the impact. The review that was ultimately done was upon the request from – from Mr and Mrs Brauer to fund the \$300,000 for the cattle. That position was reviewed and formally put before the bank.

30 MS ORR: So it's March 2011 when the Brauers come back to Australia. Is that right?---That's correct.

35 And upon their return, they seek assistance from the bank very quickly?---They did.

And not long after they returned, the bank manager of whom we've been speaking, ceased to be their bank manager?---That's correct.

40 And why was that?---He was transferred to another branch.

I see. Did he subsequently leave the bank?---He did.

45 And when did that happen?---I believe it was 2014 but I would need to check, I'm sorry.

And why did he leave the bank?---He resigned from the bank.

What were the circumstances of his resignation?---I'm not sure of his decision to resign from the bank and what that was based on.

5 You don't know what it was based on?---I don't know what his final decision was to resign from the bank.

And what about the bank's position towards him at the time of his resignation?---He was being counselled.

10 What was he being counselled for?---General application of his duties.

15 Could you elaborate on that, Mr James?---In terms of the key performance indicators that we looked at yesterday, his account manager or his – his reporting manager reviewed his performance against those key performance indicators, and had come to the conclusion that he was not performing in terms of the requirements for the key performance indicators, and then counselling ensued.

He wasn't meeting his lending target KPIs, was he?---Among others, yes.

20 Yes. And concerns were also raised about valuations that he had conducted where he had adopted past assessments of properties without considering shifts in the market?---There was one instance that we had identified, yes.

25 So in 2013 he went on a performance improvement plan, didn't he?---He did.

And could I show you that. It's RAL.0004.0001.0001?---Ms Orr, there may be an error with this document. We identify - - -

30 If you could point that out to me as we go through it, that would be helpful?---Yes.

Thank you, Mr James. Now, what page is the error on? Could we deal with that first?---It may be the entire document but I won't know until we go to the next page.

35 In what sense might it be the entire document?---I don't believe it's his performance improvement plan.

40 I see. So this is a performance improvement plan that was provided to the Commission under a notice to produce that related to the particular bank manager. Are you saying that Rabobank has provided someone else's instead?---I will know that when we turn the page.

All right. We can do that. We will turn to 0002?---That's the incorrect document.

45 All right. So you've given the Commission the wrong performance improvement plan, have you?---Yes. I have an explanation for that, if you want to hear it.

5 Sure?---It was titled The Manager in Question. But it appears that the manager that was undertaking the performance improvement plan had used a template that was provided to him from a previous employment performance improvement plan from our human resource department and didn't delete out the items that referred to the other manager. That's as best I can understand it, Ms Orr.

So although it bears the name of the bank manager we've been discussing, it does not in fact relate to him?---That document does not relate to him.

10 All right?---I believe the – I'm sorry.

No, no, carry on?---I'm sorry, I believe that he has simply used that as a template.

15 Yes?---And then has not cut out the reference to the other manager. From a completely different branch.

So do we have the performance improvement plan for the bank manager we've been speaking of?---There is a performance improvement plan but it's not complete.

20 Has that been provided to the Commission?---I believe it has.

25 Perhaps if your counsel could be good enough to identify which document that is because we've been labouring under the misapprehension that the one with the bank manager's name on it was his performance improvement plan?---I apologise. I identified that only two days ago.

30 All right. Well, perhaps if that document could be identified, we can see what that document says about this bank manager. But you have already accepted to me that the bank manager was on a performance improvement plan and that he wasn't meeting his KPIs including his lending target KPIs?---That's correct.

35 And in late 2013 it appeared to us from the documents he left the bank. You think it may have been 2014?---If you have 2013 written there, that would likely be the correct date.

All right?---It was on or about, I'm sorry.

We saw – I won't tender this document.

40 THE COMMISSIONER: Strange, that.

MS ORR: We saw yesterday that the bank manager's KPIs included lending targets for rural loans of \$15 million. You recall that?---That's correct.

45 So even if the bank manager was only involved on one side of the transaction, which we know he wasn't, the loan to the Brauers would have represented a significant step along the manager's path to achieving that target?---That's correct.

- And as I understood your evidence yesterday, you said that the discretionary bonus that the manager would be entitled to would not automatically be granted just because he reached his lending target. Is that right? It would also depend on the quality of his loans?---That's correct. Among other things.
- 5 Yes. And you said that an employee who had not reached their sales target but, for example, was in an area that was drought-affected might still get a bonus in recognition of their work?---They may do.
- 10 Yes. So aside from extreme circumstances that might affect sales performance, would a Rabobank manager be granted a bonus in circumstances where they don't meet their sales targets?---That was the example that I just gave.
- Yes?---Yes.
- 15 No, no, I'm asking you to move beyond that example. So I understand that example where there's a drought in the area and, therefore, it's very difficult to sell loans?---Sure, yes.
- 20 Some moderation of expectations - - -?---Yes.
- - - in terms of the lending targets would be there?---Yes.
- I want to put that to one side and say apart from that, would a Rabobank manager be granted a bonus if they don't achieve their sales targets?---Potentially, yes.
- So what are the other types of situations where that could occur?---They're numerous.
- 30 I see?---And as an example of that it may be somebody who has recently commenced in the role, it may be a junior manager that's learning how to become a manager. It – it may be a manager who has been ill. There are numerous circumstances, which is why the system is discretionary.
- 35 And are sales weighted highly in the consideration – in the considerations that are relevant to whether to grant the bonus?---Growing the portfolio is the – is the primary focus.
- Yes?---Growing it sustainably. So yes, it is.
- 40 So the bonus is – determination of whether or not to grant the bonus is predominantly driven by sales?---I would – it's not weighted formally at that time. So there was no metrics, if you wish, but, yes, it would be, yes.
- 45 It's predominantly - - -?---Yes.
- - - driven by sales?---Yes.

I see?---For a rural manager, yes.

5 Yes. Okay. Are you aware, Mr James, of the Retail Banking Remuneration Review issued by Mr Stephen Sedgwick in April last year?---I – I’m aware of it but I haven’t studied it.

Are you aware of it being discussed within Rabobank?---Yes.

10 And the review related to product sales, commissions and product-based payments in retail banking in Australia?---Yes.

And Mr Sedgwick made a number of recommendations which he suggested be implemented by all banks by no later than 2020. Are you aware of that?---Yes, I am.

15 All right. Could I ask you to look at RCD.0003.0073.0096. So this is the Retail Banking Remuneration Review, the report of Mr Sedgwick dated 19 April 2017. And could I ask you to turn within that document to 0109. Can you see there clause 3.2, remuneration structures for retail bank staff:

20 *I recommend that the following apply to all retail bank staff roles in scope for this review, namely, tellers, sellers, (including home lenders and in-scope financial advisers) and managers.*

25 Now, your rural managers were in-scope for this review, weren’t they?---Yes.

Number 2 there:

30 *Banks remove variable reward payments and campaign related incentives that are directly linked to sales or the achievement of sales targets (including, but not limited to cross sales, referral targets, and profit and revenue targets).*

And number 3:

35 *Eligibility to receive any variable reward payment should be based on an overall assessment against a range of factors that reflect the breadth of the responsibilities of each role.*

You see that?---Yes.

40 And could I then ask you to look at 0115. And Mr Sedgwick here is discussing ways of determining remuneration in a manner that’s consistent with the recommendations that I’ve just taken you to. And Rabobank’s approach appears to involve management discretion, which is approach 3 in this document:

45 *Variable rewards based on management discretion against individual performance measures or targets. The variable reward amount is based on management’s assessment of an individual’s performance against targets or*

*other measures. These typically include financial targets as well as non-financial measures. This approach would be consistent with recommendation 2 if, and only if, the manager's judgment takes all factors into account and is not predominantly driven by sales.*

5

?---Yes.

Do you see that?---I do.

10 So Rabobank's approach is not yet consistent with the recommendations of the Sedgwick review?---On our current remuneration structure or - - -

Yes?---Yes. I haven't considered that. With our current remuneration structure with rural managers, they are still incentivised to grow our business through loan sales.

15 They are disincentivised to write loans that aren't sustainable, and from that I believe there's a balance within our discretionary system.

20 But the balance isn't enough, is what I am putting to you, Mr James, because you have told me that the exercise of the discretion is predominantly driven by sales?---Qualified by – very clearly qualified by the quality of the loans that are written.

25 I accept that those are additional matters, but I'm referring to your evidence that the predominant matter in the determination as to whether or not to exercise a discretion to grant the bonus is sales?---It is.

30 And, therefore, your current remuneration practices for your rural bank managers, I'm putting to you, are not consistent with the position that Mr Sedgwick requires all banks to move to by 2020?---Yes.

Are there changes that are going to be made to ensure that they are?---I'm not sure of what the changes proposed are between now and 2020. The current system would fall just short of that, I would suggest.

35 Yes. We don't think we've tendered the Sedgwick review document, Commissioner, so I will tender it.

40 THE COMMISSIONER: Exhibit 4.57, Sedgwick Retail Banking Remuneration Review, RCD.0003.0073.0096, exhibit 4.57.

**EXHIBIT #4.57 SEDGWICK RETAIL BANKING REMUNERATION REVIEW (RCD.0003.0073.0096)**

45

MS ORR: Now, returning to 2011 with the Brauers, when the bank manager that we've been speaking of moved to another branch, most of his clients were transferred to another bank manager. That was Mr Greg Brady?---That's correct.

5 And Mr Brady, you tell us in your statement, became the Brauers' relationship manager in late May or early June of 2011. And you tell us also in your statement that the visit that Mrs Brauer referred to in her evidence yesterday, the visit from the previous bank manager and Mr Brady took place in May 2011?---That's correct.

10 And you say the Brauers were told in that visit that Mr Brady would be taking over as their bank manager?---That's correct.

And you also say that it was during that visit that the Brauers asked for the further funds that the bank had told them would be available to assist them with stocking the properties on their return?---That's correct.

15 And you tell us that after the meeting, Mrs Brauer followed up with Mr Brady about that request?---Yes.

20 And Mr Brady responded, and asked for further financial information and said he would look at that and then discuss with the Brauers?---That's correct.

And the Brauers provided that information sought by Mr Brady?---They did.

25 And you tell us in your statement that Mr Brady concluded from his analysis of that information that substantial asset sales would be required to be undertaken by the Brauers and applied to reduce their overall debt levels as a condition of the extension of their facilities?---Yes, he did.

30 And he told the Brauers this?---Yes, he did.

So the Brauers were told that the bank was only willing to provide the 300,000 that they needed if they agreed to repay the 3 million through the sale of one of their properties?---That's correct.

35 And did you hear the evidence of Mrs Brauer yesterday about her reaction when she was told that?---Yes, I did.

40 That they had always known they would need support from the bank when they came back, and that the bank manager had known that as well?---That's correct.

But Mrs Brauer and her husband consented to the proposal from the bank?---That's correct.

45 And you heard Mrs Brauer's evidence that she felt they had no other choice?---Yes, that's correct.

And Mr Brady prepared a credit submission for the variation of the Brauers' facility, didn't he?---He did.

5 And you've annexed that to your statement as exhibit 46. It's RAL.0002.0001.3362. And we see at 3362 that the proposal is described there as an increase to the loan limit with a new limit of \$4 million?---That's correct.

10 And there was a principal repayment of \$3 million due 30 June 2013 from the sale of a security property?---That's correct.

And if we turn to 3366, we see under the heading Covenant and Insurance Compliance and/or Account Strategy, a:

15 *Recommendation of an addition of two special conditions: asset to be sold and permanent reductions.*

?---Yes.

20 Thank you. Now, you accept in your statement to the Commission that the terms on which the 300,000 was provided to the Brauers didn't meet the expectations on the part of the Brauers that was created by the email that they received from the relationship manager, the bank manager on 22 September 2009?---Yes, I accept that.

25 And you accept that the bank's conduct in creating that expectation on the part of the Brauers that was not subsequently met was unfair?---I accept that also.

And that in that sense, there was a breach of clause 2.2 of the Code of Banking Practice?---In terms of the fairness, yes.

30 Yes. Which, therefore, could be characterised as misconduct?---It may be. It could be, yes.

35 Well, it is misconduct, isn't it? A breach of the Code of Banking Practice is misconduct?---A breach of the Code of Banking Practice is misconduct, yes.

Thank you. Now, you didn't accept this in the first version of the statement that you provided to the Commission, did you?---No, I didn't.

40 Why not?---I didn't have the – the time, I suppose, and having spoken to all of the parties involved, to completely assess the position, as I have come to the conclusion now, having not viewed this file at all prior to three weeks ago.

45 What time did you need, Mr James? The Brauers believed that the bank would give them \$300,000 to support them when they returned to Australia, and when they came back and asked for it, the bank said, "Only if you sell and give us \$3 million within two years." What time did you need to assess whether that was fair?---I think when I first viewed that, as I – as I did mention earlier, I viewed that in the context of

whether or not Mr and Mrs Brauer had other reserves to be able to complete that acquisition of those cattle. When I sat and reflected and spoke to the people involved, the internal staff involved, it became apparent to me that it was reasonable for Mr and Mrs Brauer to accept that. So that's why my view changed. The only  
5 reason my view changed.

I see?---As I said, I didn't stop reviewing this file when I signed that sworn statement.

10 I see. Now, in the lead-up to 30 June 2013, the deadline imposed by the bank for the payment of the \$3 million, Mr Brady sent a letter to the Brauers reminding them of that deadline, didn't he?---Yes, he did.

And you've exhibited that to your statement. It's exhibit 14, RAL.0002.0001.0618.  
15 So it's a letter dated 18 March 2013. So on that date we see that the bank told the Brauers that it remained committed to the special condition contained within the letter of offer?---Yes.

And at the same time that this letter was sent to the Brauers, the bank started thinking  
20 about transferring the Brauers' file to asset management?---That's correct.

And on 5 June 2013, a couple of weeks before the deadline, Mr Brady and Mr Ole, who was to be the asset manager for the file, went to visit the Brauers at their farm and reinforced that it was the bank's expectation that the Brauers would repay the  
25 amount?---That's correct.

All right. Can I ask you to look at your exhibit 22, RAL.0002.0003.0001. This is a file note of that meeting at the Brauers' farm on 5 June 2013?---Yes.

30 Do you know who prepared this file note, Mr James?---I believe the account manager, Greg Brady.

Greg Brady. Thank you. And we see in this file note a reference in the second  
35 paragraph, in the bottom third of the page:

*Adrian Brauer made particular mention of his concern.*

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

40 Continuing:

*Adrian Brauer made particular mention of his concern as to why the bank had lent them the money for purchasing Jamberoo and within three or so years required that money be repaid.*

45 ?---Yes.

So this was something that was discussed at that meeting at the farm on this date?---That's correct.

5 And we see that in closing summary, at the bottom of the page – and if we could have the subsequent page brought up on the screen at the same time:

10 *In closing summary, Greg Brady stated that the principal repayment was due and would trigger at the due date should no further consideration be taken of this matter by the bank. The Brauers requested consideration by the bank for additional time to sell their home block, Kia-Ora, and asked if the bank would delay the principal repayment.*

?---That's correct.

15 And we see from this file note that that request was noted and the Brauers were told that it would be considered?---That's correct.

And the bank did subsequently agree to a 12 month extension?---Yes, we did.

20 To 30 June 2014?---Yes, we did.

But the Brauers were still unable to pay the \$3 million by that date?---That's correct.

25 And the day after that deadline expired, on 1 July 2014, the bank started charging the Brauers default interest on the amount on which they were in excess of their loan limit?---That's correct, the limit had expired back to a million dollars.

30 And the default interest rate was four per cent above the ordinary rate?---That's correct. On the defaulted amount, yes.

And the Brauers ultimately accrued \$115,490 in default interest?---That's correct.

35 And in October 2014, the bank transferred the Brauers' file to asset management?---Yes.

And in May 2015, a farm debt mediation took place?---That's correct.

40 And prior to the farm debt mediation, the Brauers' solicitor asked the bank's solicitor for documents from Rabobank and answers to certain questions to help them prepare for the farm debt mediation. Is that right?---Was that the email received two days before farm debt mediation?

Yes, I will show you the email?---Yes, yes.

45 But before that email was sent, Mrs Brauer had already told the bank that she didn't have any documents because her computer had crashed shortly after the process of

purchasing Jamberoo started?---Is that the email the week before farm debt mediation?

5 No, that's something that you refer to in your statement. I believe that's a little earlier?---Okay, yes.

But do you recall that, that - - -?---I recall the correspondence, yes.

10 - - - her computer had crashed so she didn't have the documents?---Yes.

Then can I take you to the emails just prior to the mediation, RAL.0002.0003.0518. We will need to blow these up because they're, as you can see, quite small. I want to start with an email down the bottom of the page, in the bottom half of the page. So we see there an email from the Brauers' solicitor to the bank's solicitors on 13 May 15 2015?---Yes.

And in that email, the Brauers' solicitor set out his understanding of his clients' situation based on his review of material that had been provided by the bank in the form of a brief for the farm debt mediation?---Yes. 20

And he asked if the bank agreed to his summary of that situation?---That's correct.

And he also asked for copies of all applications, emails, letters and cash flows developed in relation to the purchase of Jamberoo with the possible scenarios of 25 leases terminating, and the application and cash flows in relation to the additional funding of \$300,000. Do you see that?---I do see that, yes.

And we see that the solicitor also asked a series of questions, and we can see the start of them on this page, and there are others on the following page, that arose from his 30 understanding of the events. He wanted to know how the bank had prudentially determined that the clients had a capacity to repay the debt as and when the leases terminated when the loan was approved in 2010?---That's correct.

And over the page, at 0519, he asked how the bank justified: 35

*... providing the additional funding of 300,000 for livestock when it imposed additional requirements seeking a huge principal reduction?*

?---That's correct. 40

And then if we go back to 0518, we see the bank's response two days later on 15 May. The initial response in the middle of the page was that the person at the client from whom the solicitors took instructions was on leave and instructions were being sought. And then further up the page on 18 May, a full response was given based on 45 instructions?---Yes.

And in that full response we see that the bank did not answer the questions that were posed?---That's correct.

And the bank did not provide the documents that were sought?---That's correct.

5

All the bank did was to maintain that it had acted appropriately throughout the banking relationship, that it had properly assessed the applications for finance which were made, and that any allegation to the contrary was denied with the bank reserving all of its rights?---That's correct.

10

Now, in the second witness statement that you provided to the Commission on Friday last week, you now accept that the bank should have provided the documents that were sought by the Brauers' solicitor prior to the mediation?---Yes.

15

And you accept that it was unfair for the Brauers to be required to attend the mediation when they didn't have documents that would have been of assistance to them in the mediation?---Yes, we do accept that.

20

And you accept that the bank's conduct was unfair and fell below community standards and expectations?---In this instance I believe so, yes.

25

And you also accept that it could be characterised as misconduct because it may have breached clause 2.2 of the Code of Banking Practice on the basis of being unfair?---Yes.

30

The fair thing to do would have been to provide the documents if they were available or if they weren't immediately available to offer to postpone the mediation to a later date, wouldn't it?---It would have, and the option to do so was available to all parties but I think we should have done that.

35

Yes. Well, you were the ones who had the documents and the information and you refused to provide it?---In that timeframe, yes.

Yes?---And, again, I think all parties had the option to defer mediation but I believe we should have offered that.

40

Why would the Brauers think it was worth deferring the mediation. You had made your position clear which was that you weren't going to provide the documents or information and your position was that you had done nothing wrong?---Correct.

45

So what – what would they have gained by deferring the mediation?---For mine, when I read that, I would have thought that the – the correct position was for us to defer mediation, Ms Orr. I'm not stepping aside from that.

Yes?---All I'm trying to do was explain from my point of view, my own review of the file, that I believe that option was available to all parties, including their legal counsel. That we didn't, I maintain was not fair.

I'm just struggling to understand the basis on which you say that was an option available to the Brauers. Do you think they should have continued trying to persuade the bank to provide the documents and information?---They could have, yes.

5 In the face of this communication from the bank's solicitors, Mr James?---That's my position on it, Ms Orr.

Do you think there's anything in this email that suggested to them that the bank might reconsider its position?---It doesn't appear so, no.

10

No. So the Brauers - - -

15 THE COMMISSIONER: Just a moment, Ms Orr. The questions which the solicitor for the Brauers was asking the bank were the questions which the first credit officer had asked about the first credit proposal, weren't they?---They were.

20 Yes. And is there any record – I don't think I've yet seen a record produced by Rabobank which shows a credit officer recording satisfaction of the questions that had been posed in that first response?---I looked for that also, Commissioner, and I haven't been able to see it. And in the approving comments, they weren't included.

Because those questions were put on the table before the mediation began. Is that right?---Yes.

25 They were questions that the bank internally had raised at the outset of this file?---In 2009, yes.

30 Yes. What should the bank have done when it went into the mediation knowing that the Brauers' lawyers had asked these questions which were questions the bank had asked and to which you can find no answer in the files of the bank. What should the bank have done at mediation?---I think at – at – prior to mediation, I think we should have had that full and frank conversation with Mr and Mrs Brauer as to what led to the position that existed. Our – our view of the mediation and our intention of what should have happened at mediation was a resolution going forward, not a forensic of what had happened in the past. But we should have – we should have been privy to that information with Mr and Mrs Brauer before mediation.

35 You speak of not – a forensic inquiry into what had happened in the past. Is it any part of that mediation process – and you may say it's not – for the bank to understand, putting it colloquially, where the customer is coming from?---Yes.

40

What it is that the customer feels aggrieved about?---I think - - -

45 Is that something that is important, unimportant, relevant, irrelevant, or are we – at mediation do you say the bank looks forward, we are at this point, how do we go forward? What's the answer?---I think to go forward we have to consider the past in these circumstances. I think the position that – that – that we take at mediation from

– and I’m not the mediator or I’m not the person that predominantly does mediations. This is my interpretation, Commissioner, but I understand that – that we are trying to resolve going forward, and – and in doing so, I believe that we should also consider what has led to the circumstances; whether or not the mediation is used as a platform for the analysis of that, I don’t think that is productive in the context of mediation but I also don’t think it would be fair – and that is why I’ve pointed to this being unfair – that we attend mediation without the benefit of what led to the position.

Yes?---That’s my personal position, Commissioner.

Yes.

MS ORR: Mr James, the outcome of the farm debt mediation was that the bank agreed not to take enforcement action, and to rebate the default interest on the basis that the Brauers would sell Jamberoo for not less than two million by the end of the year, and that they would pay a total of four million to the bank by the middle of the following year, 30 June 2016?---That’s correct.

And why did the bank press the Brauers to repay the entirety of their loan facility at this time rather than the \$3 million that was the subject of the special condition?---I – I believe the context of that was to – to satisfy the requirement to get the debt to what we perceived was a manageable level, and moving forward from that point for Mr and Mrs Brauer to refinance. I’m not entirely sure of the rationale for that, I’m sorry.

To get the debt to a manageable level, that would have got rid of all of the debt, wouldn’t it?---No, getting the debt to a manageable level in the context of farm debt mediation, I believe, was to put a floor of \$2 million in the funds generated from the sale of the property.

Yes?---Which limited our write-off, I suppose, in the circumstances we were looking at, and put a ceiling in it for Mr and Mrs Brauer of \$4 million provided they achieved a figure of above that 2 million. The residual debt between 1 million and 1.5 million would have been, in our view, I imagine, at the time, sustainable, with the remaining property of Kia-Ora servicing it. I believe that’s the view that was taken.

Well, did the bank want to get the Brauers off their books?---Well, that is the inference from that. There was nothing I read to indicate that we did – that we didn’t have a – a desire to continue to be associated with the Brauers. Nothing through any of this has indicated that we had a desire not to deal with Mr and Mrs Brauer.

But the bank didn’t appear to be interested in settling – for the Brauers selling Jamberoo, paying the proceeds of sale and then supporting them to continue farming on Kia-Ora?---No, that’s not how – that’s correct, that’s not how the deed was struck.

Why not?---I can’t give an answer, I’m sorry. I don’t know. That’s why I can’t give an answer.

You accept in your statement that the Brauers incurred a capital loss of approximately half a million dollars as a result of their acquisition and sale of Jamberoo?---That's purely the difference between the purchase price and the sale price.

5

Yes. That's not the entirety of the loss they incurred, is it?---Well, it wouldn't be no, no.

10 No. And do you accept the bank manager's conduct in initiating and executing the plan for the Brauers to borrow money to purchase Jamberoo was unacceptable conduct?---I don't think it was full and complete and it probably does – in reviewing the file it probably does make it – it probably does make it unacceptable. I hadn't considered that wording, but when I fully – fully and frankly reflect on this, I think so.

15

This wasn't conduct of a diligent and prudent banker, was it?---I think the communication between the two parties wasn't what it should have been.

20 Well, the problems were much deeper than communication, weren't they, Mr James?---I think they were – sorry.

25 I'm sorry?---I think they were predicated on communication, absolutely. And I point – and I point out that Mr and Mrs Brauer were advised by farm advisers as well in this – in this case, and it was incumbent on us to ensure that we provided sufficient capital for Mr and Mrs Brauer to complete the purchase. It was incumbent on us to ensure for the bank's position, as well as Mr and Mrs Brauer's position to ensure that it was adequately funded and if it couldn't be adequately funded that it shouldn't have proceeded.

30 The Brauers relied on the relationship manager, the bank manager, they relied on his advice before entering into the loan, didn't they?---Advice, I think, is something that we are very, very cautious of providing.

35 I understand?---Very cautious, for good reason. But I believe that Mr and Mrs Brauer, with the external advice that they had, were well informed, and I also believe that Mr and Mrs Brauer had a good understanding of business, having a corporate structure that we viewed with the trusts that they had established as well as the off-farm investments they had, I believe they were of good economic – or, rather, good understanding of the economic circumstances they were going into.

40

So they had some investment properties and they had a trust structure?---They had four or five trusts, I believe, yes.

45 And what I want to put to you - - -?---I'm not deflecting, I'm sorry. I'm not deflecting. I'm just for completeness just trying to understand where that communication should have rested. It was certainly with the bank but I think it was with all parties.

Yes, because they relied on the bank, didn't they?---Relied on the bank as well as their advisers, I would imagine, yes.

5 Yes. Now, Rabobank has a code of conduct, doesn't it?---Yes, we do.

And Rabobank markets itself as a socially responsible bank?---Yes, we do.

And your code of conduct makes clear that Rabobank:

10 *... consciously shares in the responsibility for the living environment of our customers. We are a socially responsible bank that sets store by the wellbeing and prosperity of people.*

?---That's correct.

15

Did Rabobank's employees act consistently with that statement in their dealings with the Brauers?---I think the intention was consistent with it but the execution may not have been.

20 You may have heard in my opening statement at the start of these hearings my reference to the two submissions that the Commission received from Rabobank in response to the Commission's request for information from the bank about its misconduct and its conduct that fell below community standards and expectations?---Yes.

25

And Rabobank made no acknowledgement of misconduct or conduct falling below community standards and expectations in relation to the Brauers in either of those submissions, did it?---No.

30 But late on Monday afternoon this week, after I had delivered that opening statement, Rabobank's lawyers sent the Commission a letter saying that Rabobank now wished to add its conduct in relation to the Brauers to the acknowledgements that it had made in those two submissions?---That's correct.

35 It was only after the Commission investigated the circumstances of the Brauers and required Rabobank to produce documents and statements that Rabobank has conceded the misconduct and conduct falling below community standards and expectations that it engaged in with the Brauers?---For completeness, that came about because we internally investigated that at the request of the Commission, the  
40 situation.

Yes?---At the request of the Commission. And that information in full became available to us, and that is why we rightfully volunteered it to the Commission.

45 Yes?---It wasn't withheld because it wasn't known. It wasn't known.

I'm not suggesting it was withheld?---Thank you. Thank you.

No. I'm suggesting that it was as a result of the Commission - - -?---Absolutely.

5 - - - requiring Rabobank to produce documents and provide a statement – it was as a result of that that Rabobank has got to the position it has now got to, which is a concession of misconduct and conduct falling below community standards and expectations?---The Commission gave us the opportunity to fully review the file. Yes, I agree.

10 I want to put to you that Rabobank has made those concessions reluctantly, initially telling the Commission that there was no misconduct or conduct falling below community standards and expectations, and only changing that position after the Commission published the list of entities whose conduct it was going to examine in these hearings, and it became clear that Rabobank would need to give evidence in these proceedings?---I don't accept that notion.

15 I see?---And I can personally vouch for that, Ms Orr, because I was the one that conducted the review. And before I picked this file up three weeks ago, I was not sure of the extent to which these actions played out. So I can personally tell you, Ms Orr, that we weren't privy to it, because after my investigation we became privy to it.  
20 It wasn't information that was held elsewhere and not volunteered.

But on your first review of that information you conceded no misconduct?---In that short period of time, having not reviewed the file before that, yes. To not – to not have continued reviewing that file after I signed that witness statement would have been improper.  
25

Yes?---And I understand that you're referring to that on a couple of occasions and I respect that, but I do need to make it clear that I learned as I went.

30 Yes?---And it would have been improper to not continue to review it. And then to have not put forward what I learned subsequently.

Yes. Yes?---So I stand by that.

35 And does Rabobank propose to remediate the Brauers in any way?---I haven't considered that.

40 Will you consider that?---In this forum, I don't feel comfortable considering that. I think it's something that should be done without the public gaze. I think it should be something that should be referred to – it should be referred to our executive and I think it's something we will quietly consider.

Thank you, Mr James. I have no further questions.

45 THE COMMISSIONER: Just three matters, Ms Orr. First, housekeeping, the emails Brauers' solicitors to Rabobank between 13 and 18 May 2015, RAL.0002.0003.0518, exhibit 4.58.

MS ORR: I think – and I’m sorry I might not have made this clear but they are, I think, an exhibit to your second statement - - -

THE COMMISSIONER: Already in?

5

MS ORR: - - - provided to the Commission on Friday last week?---Yes, they are.

THE COMMISSIONER: Need not mark them again. Two, did we ever get to the bottom of the performance review?

10

MS ORR: We think we have it but it hasn’t been through the redaction process, and I would need to confirm with Rabobank’s counsel that the one we have is the correct one. It might be prudent to take a few minutes to resolve that before Mr James leaves the witness box.

15

THE COMMISSIONER: Yes. The third thing, Mr James, just going back to the Brauers, of course, you spoke of it, towards the end of your evidence, as a matter hinging around communication. Do you remember that - - -?---Yes, I do.

20

- - - passage of answers?---Yes.

Did Rabobank ever record in its files a conclusion that the initial proposal was serviceable?---No.

25

Therefore, does it follow that Rabobank never recorded in its files how the initial proposal would have been serviceable?---That’s correct.

I just wonder and raise for your comment whether that may not be at the heart of this matter, rather than some want of communication between banker and customer?---I believe that the communication issue would not have arisen had the – had that circumstance not arose in the first place, yes. Communication would not have become central to the issue had the loan been assessed properly in the first place as proposed.

30

35

And it was not?---Not as proposed by Mr and Mrs Brauer, no.

Yes. Now, if I - - -

40

MS ORR: I think, Commissioner, if we could have a slightly longer break so that we can find and consider that document.

THE COMMISSIONER: Do I come back at 20 to or quarter to?

45

MS ORR: Quarter to would be helpful.

THE COMMISSIONER: Quarter to.

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: All right. We will keep you a little longer, Mr James, and  
---Thank you.

5

--- I will resume at quarter to midday.

MS ORR: Thank you, Commissioner.

10

**ADJOURNED**

**[11.32 am]**

**RESUMED**

**[11.45 am]**

15

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: We've located that document, Commissioner. I don't propose to ask any  
20 questions about it, but I understand it will be tendered by Rabobank.

MR McGRATH: Yes.

THE COMMISSIONER: Yes.

25

MS ORR: So I have no further questions for the witness.

THE COMMISSIONER: Yes. Yes, Mr McGrath.

30

**<RE-EXAMINATION BY MR McGRATH**

**[11.45 am]**

MR McGRATH: Mr James, yesterday you were asked questions about lending ratio  
35 guidelines of the bank that were in place at the time that the proposal for the  
acquisition of Jamberoo was considered. If I could just bring up a document before  
you. It's RAL.0005.0008.0232. Now, could you please have a look at that  
document and then I will ask you a question in relation to it?---Yes.

40 Do you identify that as being the lending ratio guidelines that were in place at the  
time that the loan for the acquisition of Jamberoo was assessed?---They are the  
guidelines as at December 2008, yes.

45 Yes. And that those ones were in place at the time of the assessment in 2009?---Yes,  
they were.

And Mr James, as you have mentioned in your evidence, you picked up the file three weeks ago, and you've reviewed it and you've given your statements and your evidence. Is there anything further that you wish to say on behalf of Rabobank in relation to this matter?---There is one thing I would like to add.

5

And what is that?---If I may direct this to – to Mr and Mrs Brauer, that on behalf of personally myself and on behalf of Rabobank, I would like to express regret at how this transaction has unfolded, and I sincerely mean that. And I wish you well.

10 There's no further questions, your Honour.

THE COMMISSIONER: Mr James, do you propose to tender the lending ratio guidelines or are they already in?

15 MR McGRATH: Sorry, I wish to tender that document together with a number of others, Commissioner.

THE COMMISSIONER: Yes, well, Rabobank lending ratio guidelines 24 December '08 RAL.0005.0008.0232 is exhibit 4.58.

20

**EXHIBIT #4.58 RABOBANK LENDING RATIO GUIDELINES DATED  
24/12/2008 (RAL.0005.0008.0232)**

25

MR McGRATH: There are no further questions of Mr James. There is a tender, however, I wish to - - -

THE COMMISSIONER: Yes.

30

MR McGRATH: - - - make. And that is there are a set of documents that are listed on this hardcopy document, Commissioner, which are documents that are tendered on behalf of Rabobank with the consent of Counsel Assisting. They are in the hearing book and the set of the document IDs are contained in it. Do you wish me to read out each of the document IDs or simply have the document itself provided to the Commission?

35

THE COMMISSIONER: Provide the document. If I can see the document, I will rattle off the exhibit numbers so that we can keep our exhibit numbering system running. How many have we got, Mr McGrath?

40

MR McGRATH: There are a total of 28 documents in there.

THE COMMISSIONER: There might be a change of plan happening at this point, Mr McGrath. The documents on the list will become in order exhibits 4.59 to 4.86 so the Rabobank tender list, if that can ultimately be incorporated into the transcript as part of the exhibits.

45

- EXHIBIT #4.59 EMAIL DATED 04/07/2009 (RAL.0002.0003.3005)
- 5 EXHIBIT #4.60 EMAIL DATED 07/07/2009 (RAL.0002.0003.2989)
- EXHIBIT #4.61 EMAIL DATED 08/07/2009 (RAL.0002.0003.3208)
- 10 EXHIBIT #4.62 EMAIL DATED 22/07/2009 (RAL.0002.0003.1468)
- EXHIBIT #4.63 EMAIL DATED 22/07/2009 (RAL.0002.0003.2676)
- 15 EXHIBIT #4.64 EMAIL DATED 23/07/2009 (RAL.0002.0003.2679)
- EXHIBIT #4.65 EMAIL DATED 23/07/2009 (RAL.0002.0003.3214)
- 20 EXHIBIT #4.66 EMAIL DATED 05/08/2009 (RAL.0002.0003.1283)
- EXHIBIT #4.67 EMAIL DATED 05/08/2009 (RAL.0002.0003.1287)
- 25 EXHIBIT #4.68 EMAIL DATED 05/08/2009 (RAL.0002.0003.3199)
- EXHIBIT #4.69 EMAIL DATED 13/08/2009 (RAL.0002.0003.2984)
- 30 EXHIBIT #4.70 PDF FILE DATED 13/08/2009 (RAL.0002.0003.2985)
- 35 EXHIBIT #4.71 EMAIL DATED 13/08/2009 (RAL.0002.0003.2986)
- EXHIBIT #4.72 PDF FILE DATED 13/08/2009 (RAL.0002.0003.2987)
- 40 EXHIBIT #4.73 EMAIL DATED 25/08/2009 (RAL.0002.0003.3220)
- 45 EXHIBIT #4.74 EMAIL DATED 25/08/2009 (RAL.0002.0003.3229)

**EXHIBIT #4.75 PDF FILE DATED 25/08/2009 (RAL.0002.0003.3230)**

5

**EXHIBIT #4.76 EMAIL DATED 31/08/2009 (RAL.0002.0003.3031)**

**EXHIBIT #4.77 XPS FILE DATED 31/08/2009 (RAL.0002.0003.3032)**

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**EXHIBIT #4.78 EMAIL DATED 31/08/2009 (RAL.0002.0003.3227)**

**EXHIBIT #4.79 EMAIL DATED 31/08/2009 (RAL.0002.0003.3228)**

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**EXHIBIT #4.80 EMAIL DATED 01/09/2009 (RAL.0002.0003.1656)**

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**EXHIBIT #4.81 EMAIL DATED 18/09/2009 (RAL.0002.0003.1434)**

**EXHIBIT #4.82 EMAIL DATED 18/09/2009 (RAL.0002.0003.1442)**

25

**EXHIBIT #4.83 PDF FILE DATED 22/09/2009 (RAL.0002.0001.3694)**

**EXHIBIT #4.84 EMAIL DATED 22/09/2009 (RAL.0002.0003.1450)**

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**EXHIBIT #4.85 VSD FILE DATED 22/09/2009 (RAL.0002.0003.1458)**

35

**EXHIBIT #4.86 EMAIL DATED 14/01/2011 (RAL.0002.0003.2646)**

MR McGRATH: Thank you, Commissioner.

40

THE COMMISSIONER: So that takes me to what? 4.86. Yes.

MR McGRATH: There is a further tender, which is a document which has now just been provided in hardcopy to the Counsel Assisting. It relates to the issue of the current key performance indicators of a rural manager. Perhaps I can have that document tendered through Mr James before he leaves the box.

45

THE COMMISSIONER: Yes. That's why I kept him here. Yes.

MR McGRATH: Could I provide a copy of that document.

THE COMMISSIONER: Yes. I think it can go to Mr James, please.

5 MR McGRATH: Mr James, you recognise that as a document entitled Rural Manager. Could you, please, inform the Commission if you agree that this is a set of the current key performance indicators for the position of rural manager at Rabobank Australia Limited?---Yes, it is.

10 And the position of rural manager is effectively the same position as that of the – the manager who has been described in relation to dealing with the Brauers?---Yes, it is.

I tender that document.

15 THE COMMISSIONER: Rabobank KPIs Rural Manager (current) will be exhibit 4.87.

**EXHIBIT #4.87 RABOBANK KPIs RURAL MANAGER (CURRENT)**

20

MR McGRATH: May I have a moment to provide this document. Could I provide you with a further document. Can you please look at that document, Mr James. You were asked some questions by Counsel Assisting about the performance improvement plan for the manager involved in the transaction with the Brauers?---Yes.

25 You said that the one that had been provided was not the correct one. Can you identify this as being a document that relates to the performance improvement plan for that particular manager?---Yes. Yes, it is, yes.

30

I tender that document.

THE COMMISSIONER: Have you got a doc ID on that one yet?

35

MR McGRATH: Yes. RAL.0004.0004.0040.

THE COMMISSIONER: Performance improvement plan, Brauers' manager, RAL.0004.0004.0040, exhibit 4.88.

40

**EXHIBIT #4.88 PERFORMANCE IMPROVEMENT PLAN, BRAUERS' MANAGER (RAL.0004.0004.0040)**

45

MR McGRATH: Thank you, Commissioner. There's nothing further.

THE COMMISSIONER: Yes, Mr James. Thank you, you may step down. You're excused?---Thank you.

5 <THE WITNESS WITHDREW [11.53 am]

MS ORR: Commissioner, that concludes the case study in relation to Rabobank. We're moving now to a case study in relation to Bankwest. We may need to have another short adjournment to allow Bankwest counsel to take their place at the bar table.

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

15 MS ORR: Yes, that's fine. Thank you, Commissioner.

THE COMMISSIONER: Yes.

20 ADJOURNED [11.54 am]

RESUMED [11.59 am]

25 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: If the Commission pleases, I call Mr Melville Ruddy.

30 <MELVILLE WILLIAM RUDDY, SWORN [11.59 am]

35 <EXAMINATION-IN-CHIEF BY MS ORR

THE COMMISSIONER: Thank you, Mr Ruddy. Do sit down. Ms Orr.

40 MS ORR: Mr Ruddy, is your full name Melville William Ruddy?---Yes, it is.

And do you live at an address that is known to the Royal Commission in Cooladdi in Queensland?---Yes, I do.

45 And what's your occupation, Mr Ruddy?---Farmer.

And Mr Ruddy, did you receive a summons to attend to give evidence today?---Yes, I have.

Do you have that summons there with you?---Yes, I do.

I tender that summons, Commissioner.

5 THE COMMISSIONER: Exhibit 4.89, summons to Mr Ruddy.

**EXHIBIT #4.89 SUMMONS TO MR RUDDY**

10

MS ORR: And Mr Ruddy, did you make a statement to the Royal Commission dated 21 June 2018?---Yes.

You have that statement there?---Yes, I have, yes.

15

And is there an amendment that you wish to make to that statement?---Yes, there is, yes.

Is that amendment to paragraph 27 of the statement?---Yes. Yes, it is. 27, yes.

20

And is the amendment to the sentence beginning “In addition”?---Yes.

Which we see on the fourth line down?---Yes.

25

And is the amendment to delete the words after the word “because”, and add the words:

*The profit margins on the trading model were diminishing.*

30

?---Yes.

So does that full sentence now read:

*In addition, the farm was not performing as well as I had hoped for a number of reasons, including because the profit margins on the trading model were diminishing.*

35

?---Yes, that’s correct.

40

That amendment has been handwritten on the statement?---Yes.

Could you please initial that amendment? Do you have a pen there, Mr Ruddy? And having made that amendment, are the contents of your statement true and correct?---Yes.

45

I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit 4.90, the statement of Mr Ruddy and its annexures.

5 **EXHIBIT #4.90 STATEMENT OF MR RUDDY AND ITS ANNEXURES**

MS ORR: Mr Ruddy, could you please explain where Cooladdi is in Queensland?---Yes, it's 110 k west of Charleville.

10

And how long have you been a farmer, Mr Ruddy?---Yes, well, I left school when I was 14 and started working on the family farm. Yes, I've been farming and working off-farm ever since.

15 And how old are you now, Mr Ruddy?---68.

And what was the first farm that you worked on?---On my dad's farm.

And are you married - - -?---Yes.

20

- - - Mr Ruddy?---Yes.

Do you have any children?---Yes, three boys.

25 And in the 1970s, did you and your wife purchase a farm?---Yes, we did.

Was that farm called Coolibah?---Yes, it was.

30 Later in the 1970s, did you and your wife also purchase your parents' farm?---Yes, we did, yes.

And that was a farm called Gleneden?---Yes, it was.

35 And then in the 1980s, did you and your wife sell those two farms?---Yes, we did.

And you bought a further farming property in Tara?---Yes.

And did you subsequently sell that property?---Yes.

40 Also in the 1980s, did you and your wife buy a farm called Sunrise?---Yes, we did.

And where was Sunrise located?---30 k north-west of Toowoomba.

And did you need to borrow money to buy Sunrise?---Yes, we did.

45

Who did you borrow that money from?---Westpac and the Agricultural Bank.

- And did you and your family move to Sunrise?---Yes, we moved there in '85.
- And what sort of farming operations did you run at Sunrise?---Just grazing cattle and a small feedlot.
- 5 Now, by the early 1990s, how were things going with your operations on Sunrise?---Well, we were sort of – we were travelling along all right, never had much debt, anything like that, yes. I was doing a lot of off-farm work. Yes.
- 10 And what was the nature of the off-farm work that you were doing?---Yes, I was doing a little bit of contracting and working for agents in cattle yards, and – and generally off-farm work, yes.
- And in 2000, did you buy a dozer?---Yes, I did, yes.
- 15 And what did you use the dozer for?---We used the dozer for contract cutter-barring or blade ploughing.
- 20 Could you explain what cutter-barring or blade ploughing is, Mr Ruddy?---Yes, it's – I was developing woody weed – weed country up so pasture can grow, and – and, yes, it stops erosion and improves your country and develops pasture.
- And in the period when you were doing that off-farm work, did you notice some changes in the values of land in your area?---Yes, I did, yes.
- 25 What did you notice?---Well, after – well, around Mitchell where I was doing it, when places were sort of developed up with cutter-barring and buffel started growing they increased in value dramatically, quite substantially.
- 30 So you saw increases in property values?---Yes.
- And what did you think about that?---Well, it was – that was a good opportunity, I thought, so I started looking around for a place to buy myself, Marg and I to develop up, yes.
- 35 And in 2004 did you buy a farm called Arranfield?---Yes, I did.
- And where is Arranfield?---Arranfield is 110 k west of Charleville on the Paroo River.
- 40 And how did you find out that Arranfield was available?---Through agents. Just in Charleville I had an agent looking out for me.
- And at that time you still owned Sunrise?---Yes, we did.
- 45

- And can you describe what type of property Arranfield is?---It's about a quarter open downs country, and – and, yes, probably – yes, about a quarter sandalwood country and the other half would be mulga.
- 5 And what did you plan to do on Arranfield?---Like graze cattle, yes.
- And did you buy Arranfield with anyone else?---Yes, I did.
- Who did you buy it with?---One of my sons.
- 10 And who is on the title for Arranfield?---One of my boys.
- And were you on the title as well, Mr Ruddy?---Yes, I was.
- 15 Yes. And how did you divide up your shares of the property?---I own three quarter and my son owned a quarter.
- And do you recall what the purchase price was for Arranfield?---Yes, it was 465,000.
- 20 And how did you divide that purchase price between you and your son?---Yes, [REDACTED] put 100 – my son [REDACTED].
- MS ORR: We have a non-publication direction in place for the name of Mr Ruddy's son, so I will just mention that for the benefit of the recording.
- 25 THE COMMISSIONER: A bit tough when you can't refer to your son by his name, Mr Ruddy, but we had better look after him. Just refer to him as "my son" and we will know who?---I apologise about that.
- 30 MS ORR: That's all right, Mr Ruddy. You were telling us about how you divided the purchase price?---Yes, one of my sons put in 100,000 and I – I – yes, I borrowed the rest of the money from NAB, yes.
- So at that time did you still have a mortgage on Sunrise?---Yes, we did.
- 35 And did you have some other debts?---We had a working capital account with Elders.
- And did you need to borrow money to fund your share of Arranfield?---Yes, I did.
- 40 And you said you borrowed that from NAB?---From NAB, yes.
- And do you remember how much you borrowed from NAB?---Yes, well, all up we – we moved – the whole debt was 650,000 with NAB.
- 45 And when you say the whole debt, that took in the mortgage of Sunrise as well as of Arranfield. Is that right?---That's right. That's correct.

And at the time you bought Arranfield with your son, do you recall what the value of Sunrise was?---Approximately 650 – 600 thousand

5 And so what was your equity position across the two farms at that time?---Approximately 40 per cent, I think.

And did your son give a guarantee to NAB in respect of the loan?---Yes, he did.

10 And was the guarantee over the entirety of, or just part of the loan?---His – his guarantee was just part of the loan, his quarter share and Arranfield was the guarantee.

Thank you. And after you and your son purchased Arranfield, did you continue to farm at Sunrise?---Yes, we did.

15 How did you manage that?---My wife sort of worked – worked it and I worked Arranfield, and, yes, we were bringing cattle down and backgrounding them at Arranfield and – and putting through a small feedlot at Sunrise.

20 So your wife was running Sunrise?---Yes.

And you were running Arranfield?---Yes.

25 And where were you both living?---Well, she was living at Sunrise and I was living at Arranfield, yes.

What's the distance between them, Mr Ruddy?---730 k.

30 Now, did that set-up start in about 2004?---Yes, 2004/5.

Okay. And after the first few years of your arrangement with NAB, did you and your wife decide to refinance your facilities in 2007?---Yes, we did.

35 And why did you decide to do that?---We were making a yearly reduction to NAB, and – and we thought an interest-only loan with – with the Rural Bank would put our stock mortgage and put it altogether and just work on interest-only and – and put more money into developing the place. It needed a lot of money spending on it.

40 Are you referring to Arranfield?---Arranfield, yes.

Yes. So you decided to move to Rural Bank?---Yes, we did, yes.

45 And at the time that you refinanced with Rural Bank, did you increase your debt?---Yes, we did.

And what did you use the additional money for?---I bought some cattle and I did more cutter-barring.

Yes. And in your time at Rural Bank did you have some different bank managers?---I did. I had a couple. That's all. Yes.

5 And was one of them a bank manager by the name of Ian Balsillie?---Yes, he was, yes.

And how was your relationship with Mr Balsillie?---Very good.

10 And did he subsequently leave Rural Bank?---He did.

And where did he go when he left Rural Bank?---He went to Bankwest.

And do you remember when that was?---2009 or '10.

15 Now, by 2010, had you and your wife started to discuss selling Sunrise?---Yes, we had, yes.

Now, having had those discussions about potentially selling Sunrise, did you get a call in August 2010 from Mr Balsillie?---Yes, I did.

20 Had you had any contact with Mr Balsillie in the interim?---Not a lot. Maybe one phone call occasionally, but not that I can recall, no.

And what do you recall of that conversation with Mr Balsillie in August 2010?---He just – yes, suggested that Bankwest could give me a better deal.

25 Did he talk to you about whether someone from Bankwest could come to meet with you?---Yes, he did. He said could he bring a – a manager out to meet with me, yes.

30 Now, the – he gave you the name of that person from Bankwest. Is that right?---Yes, he did.

And that person's name is also the subject of a non-publication direction. So I'm just going to refer - - -?---Yes.

35 - - - to him, the Bankwest bank manager as the bank manager?---Yes.

Okay. Now, had you heard of the bank manager before that time?---Yes, I had.

40 What had you heard about him?---That he was a good – a good manager and a good man.

Yes. And after you had that phone call with Mr Balsillie in August 2010, did you then have a meeting with Mr Balsillie and the bank manager?---Yes, I did.

45 Where was that?---At Sunrise.

5 And what do you recall about that meeting?---Just not a lot. We discussed things and I discussed selling Sunrise and – and, yes, and – yes, and then we – we sort of thought places were improving in value, which they were, and – and we were sort of making the option of whether to sell. We were thinking, yes, we had sort of talked along those lines, that’s all, and – yes, that’s about it, yes.

10 Do you remember Mr Balsillie and the bank manager talking to you about how the cattle market was going at that time?---Yes, they – yes, it was starting to pick up, the market was picking up in America, yes, at that stage at least.

And do you remember any discussion about what you should do with your assets at that time?---Yes. So we – we all decided, I suppose, that it’s a good time to consolidate assets and not sell them, yes.

15 I see. And do you remember any discussion about interest rates in that meeting?---They did discuss that they knew what rate I would be paying at Rural Bank and they could give me a better deal.

20 And was there discussion about the need to pay for a valuation if you moved across to Bankwest?---Yes, there was.

What did they say about that?---Well, I would have to pay for a valuation.

25 And were you interested in that?---No, I said no, I’ve never paid for a valuation, never will. I said I will stay. What’s the point of that, you’re going to save me 5,000 in interest and charge me seven and a half thousand to value the joint.

So you didn’t proceed to refinance - - -?---No, I didn’t.

30 - - - with Bankwest at that time?---No, I didn’t. I didn’t proceed, no.

35 So that was August 2010. And how did 2011 go for you on the farms?---Well, it sort of – yes, we bought – bought a few cattle, but not many, and, you know, we had a real wet year in 2011. We had about 40 inches and six inches flood in January in 2012, and all that rain in that sort of western country we had no protein in our grass and the cattle never did real good.

40 And what sort of model were you using for your cattle at that time?---At that stage we were mainly using a trading model, buying in smaller cattle and backgrounding them for – for feedlots or putting through our own small feedlot.

And what were you doing on each farm? Using the trading model?---Yes, we were.

45 Yes. Now, in the middle of that year, in the middle of 2011, did you have your annual review with Rural Bank?---Yes, I did, yes.

And did the person who handled your affairs at Rural Bank come to visit you at the farm?---Yes, he came out to Arranfield.

5 And was there any discussion in that meeting about you selling one of your properties?---Yes, it was, yes, there was.

10 And what did the bank manager say to you about that?---He thought it would be a good idea, you know, with a – because around – like, where Sunrise is situated, land values were sort of going up, and – and he said it would be a good time to consolidate and sell. Not – you know, sell Sunrise and reduce our debt substantially, yes.

15 And did you discuss that suggestion from the Rural Bank manager with your wife after that meeting?---Of – I vaguely can't recall but I would have done, yes. I can't actually – yes.

20 And did you have any views about what you were going to do after that meeting?---Yes. Well, we talked – talked about we need to sell it, and – and put more money into Arranfield, and what – how we would go about selling the place, developing – not developing, develop it like tidying it up and making it saleable, yes. We talked.

25 And around that time did you get another telephone call from the Bankwest bank manager?---Yes, I did, yes.

And what do you recall of that conversation?---The bank manager said that he now had a valuer's ticket and he would be able to value – value both properties.

30 And did that make the idea of refinancing from Rural Bank to Bankwest more attractive to you?---Yes, it did. Yes. Well, we – we sort of – you know, we thought we would look at that and keep our options open, yes.

And did the bank manager ask to come and meet you?---Yes, he did.

35 And did you agree to that?---Yes, I did, yes.

And in August 2011, did the bank manager come to Sunrise to meet you?---Yes, he did.

40 And what do you remember of that meeting with the bank manager?---Not a lot, really. I can just remember we sort of – yes, as I say, you know, we talked about it, and the cattle market was getting strong, and – and like buying cattle in were getting dear, they were getting sort of dear and the profit margin was sort of shrinking and that and we discussed going into breeding cattle, yes.

45 And did the bank manager talk to you about the value of other properties in the area?---Yes, he did, yes.

- What did he say to you about that?---He said that there was a property down the road sold for 1.2 million.
- 5 Yes?---Yes.
- And did you and the bank manager have a discussion about the value of your two properties, Sunrise and Arranfield?---Yes, we did, yes.
- 10 And did he tell you what he thought roughly the value of your two properties was?---Yes, he did.
- And what did he tell you?---He thought about well over two – two million at that stage, he said. He hadn't really – I don't know whether he had looked at Arranfield at that stage but just he said the value of both properties would be well over two million, yes.
- 15 The combined value of the two properties?---Combined value, yes.
- 20 Did he tell you what he thought Bankwest could lend you based on your properties being worth over \$2 million?---Yes, he said 60 per cent of the valuation, they lend, and 60 per cent of the valuation on the two places. And then they came back at 2.3 million.
- I see. And you said that you had some discussions with the bank manager in that visit about your cattle operations and about potentially moving across to a breeding model?---Yes.
- 25 Is that right?---That's correct, yes.
- 30 And did you talk about your plans for Arranfield?---Yes, I did. We – we – because we needed more cattle to make ourselves more viable and run more breeders, we needed to develop more country, so we – which we did, and we – Bankwest give us some more money and we did some more blade ploughing, yes, cutter-barring.
- 35 And how long did you think it would take for you to get a breeding model up and running properly?---Well, as I discussed with the bank manager then, it would take three years.
- 40 Yes?---It's not something that happens overnight. You know, a trading model, you're buying them and selling them in 12 months. As a breeder, you have got to wait for a cow to have a calf. It's a bit of a long-term thing but it's not as risky. Freight was getting dearer all the time out there to buy cattle in and – yes, it was – the trading model, profits were just shrinking each year I could see, you know.
- 45 And did you talk to the bank manager about a loan that you had from the Bank of Queensland?---Yes, I did.

What was that loan?---I think, as I recall, it was \$50,000 for about 80 head of cattle. Yes, I had a lease – a BOQ lease.

5 Yes. And did you talk to the bank manager about whether or not you might take out more stock leases?---Yes. I – yes, we did, yes. I did. Yes, I did.

Yes. To get the breeding model - - -?---Yes.

- - - up and running?---Get more cattle up, get the numbers up, yes.

10 And did you also discuss with the bank manager what would happen if things went wrong?---Yes. Yes, we did. I did. Yes, he – you know, on looking at the value of the places, he said you had plenty of equity to draw on if – you know, if you get a few – couple of bad years, you – you’ve got a couple of hundred – a few hundred

15 thousand up your belt to ride it out.

Now, the plan that was discussed in that meeting would have involved you shifting from the idea of selling Sunrise to holding on to it and putting more money into developing Arranfield. Is that right?---That’s right, yes.

20 And what did you think about whether that was a good business idea?---Well, when we went away and did our sums, and – and – yes, we were sort of working on, like, getting up to 450 breeders, it – you know, the figures sort of stacked up and thought it was a good business decision to hang on to Sunrise and keep a feedlot in there and

25 change – and change to Bankwest, yes.

And did you discuss interest rates and fees with the bank manager?---Not a lot. He told me that the interest rates would be cheaper and less fees he told me, yes.

30 Yes. And what about the guarantee that your son currently had over a quarter of Arranfield. Did you discuss that?---We certainly did.

And what was your understanding about what would happen with that if you moved across to Bankwest?---The bank manager said there’s not a problem, him being a

35 young fellow. He said we don’t expect him to guarantee the whole loan, we will just guarantee his quarter share of Arranfield, which was a \$325,000 loan, I think, as I recall.

So before that meeting with the Bankwest bank manager, you had been thinking of selling Sunrise?---Yes.

40 And you hadn’t really thought about moving to Bankwest. Is that right?---That’s right.

45 But after the meeting, you decided that you would move to Bankwest?---Yes, that’s right.

And that you would not sell Sunrise?---That's right.

Okay. And that you would borrow more money to develop up Arranfield?---That's right.

5

Now, if you hadn't had that meeting with the bank manager, what do you think you would have done?---We would have – we would have sold Sunrise because we were moving toward selling Sunrise, and – and reducing our debt, but – yes, well, when Bankwest sort of offered us that – that – such a good deal, me being an extreme optimist, I thought, “Yes, that would be the way to go.”

10

So you later told the bank manager that you would move across from Rural Bank to Bankwest?---Yes, I did, yes.

15 And in October 2011, did the bank manager come out to Sunrise with the documents for you to sign for the new facilities?---Yes.

And you've exhibited those documents, they're part of your statements, the letters of offer?---Yes.

20

And they're dated 21 September 2011?---Yes, they are. Yes.

But the meeting in which the letters were handed to you took place in October 2011. Is that right?---That is right, yes.

25

And do you recall receiving the letters of offer prior to the meeting in October?---No, well, I wouldn't have done. I would have been out at – at Arranfield, but they probably were posted to Sunrise and – and, you know, yes, I didn't read them until we – until the day I met him, yes.

30

Okay. Now, could we just look at the first of those, which is behind the first tab in your statement. FOS.0030.0001.0200?---Yes.

35 Now, if you turn to the second page of that, 0201, we see that Bankwest offered you, down the bottom of the page, a commercial advance facility with a limit of \$695,000?---Yes. Yes.

And that was in both yours and your wife's names?---Yes, that's correct.

40 And we see above that that Bankwest also offered you a \$100,000 overdraft, again both in yours and your wife's names?---Yes, that is correct.

Okay. And then if we look at the second letter of offer, which is FOS.0030.0001.0209 behind your second tab, Mr Ruddy. We see from the second page of that document, 0210, that Bankwest also offered you a commercial advance facility in your name?---Yes. Yes, that's correct.

45

That was for \$325,000?---Yes.

And the letters of offer also contain guarantees?---Yes.

5 And in relation to this facility, the facility that was just in your name, the guarantee was provided by your wife?---Yes, it was.

And when the bank manager brought the documents to you, had he marked them up to show you where you and your wife needed to sign them?---Yes, he had, yes.

10 And did he explain the terms of the documents to you?---Not – not really at the time. I should have read them more carefully myself but I just thought they were a farm – a rollover farm facility, you know. Yes.

15 And how long did you think the facilities were going to run for?---Well, I was informed that I wouldn't need another valuation till August 2014, and I just naturally thought the facility went till that – till then. And that time the manager said – by then he said with the development you're doing, your places will have improved in value and – yes.

20 So this was September/October 2011. So you thought the facilities would run for approximately three years - - -?---Three years.

- - - till August 2014?---Yes.

25 And was that consistent with your plans - - -?---Yes.

- - - for how long it would take you to get the breeding model up and running?---Yes, it was, yes.

30 And who did you think would do the further valuation that would be needed in August 2014?---Well, I naturally thought that – that the bank manager would do it. I was looking forward to a long relationship with him.

35 Yes?---He seemed a good guy. And – and he knew his cattle.

So you and your wife signed these letters of offer - - -?---Yes.

40 - - - Mr Ruddy?---Yes, we did.

And did you have a careful read of them before you signed them?---Well, I know I should have done but I probably didn't, no.

45 And did your son sign another guarantee in relation to the facilities?---Yes, he did.

And was that guarantee only in relation to Arranfield?---Well, that's what we believe it was, but then later on we found out it wasn't. That's what it was supposed to be in

the agreement, that we discussed, that is his guarantee was only – only his quarter share in Arranfield, yes.

5 And did Bankwest go ahead and prepare valuations of your properties in this same month?---Yes.

In October 2011?---Yes, they did, yes.

10 And did you ever get a copy of those valuations?---No, I was told what they were, though.

Yes. And what were you told the values of the properties were?---As I recall, Sunrise was 1.2, and Arranfield was 1.1.

15 Now, having moved across to Bankwest by signing these letters of offer, did you also take out some more stock facilities with the Bank of Queensland?---Yes, I did.

And did you also continue with your off-site work?---Yes, I did.

20 And in the first year after you moved across to Bankwest, how did you find your dealings with them?---Well, I wasn't having any problem with the manager, but the facility seemed to roll over and, you know, instead of paying interest every six months we were paying interest every two months. For a start it was a month and then they changed it to two months, and – and the facility – or they were bank bill  
25 facilities, you know, and I never had anything to do with them prior to this, you know, it was just a different – and it was a bit confusing, and, you know, you're having to draw on your – yes, you're having to make interest payments all the time. Yes. It was a bit difficult, yes.

30 And did you raise that with Bankwest?---Yes, I did at the time, yes.

And what did they say?---I can't really recall. They said they would try and fix it. They might be able to roll it over – I think they rolled it over to three monthly or six  
35 monthly ones then, and did – yes, they did help that way, yes.

And did you struggle to make the interest-free payments?---Yes, we did, yes.

40 And in 2012, being the year after you got your facilities from Bankwest, how was your health?---Yes, I just got a bit crook there for a while and I was – I was – yes, I was in hospital obviously for only a little while, yes, and I was off work for a month. I had diverticulitis pretty bad. I lost a lot of blood.

So you were hospitalised?---I was hospitalised for over a week, yes.

45 And you were off work?---For about a month.

Okay. And how were you going with building up the breeders in that year?---Yes, we were starting to get a few cattle together, yes. Yes, it was working – it was starting to – the numbers were coming up. Like in 2012 we weaned 360 calves – 367, actually.

5

And in that year did you increase your overdraft on a number of occasions?---Yes, we did, yes.

10 And why did you do that?---Well, to help cover our interest, and – and while we were waiting for the – you know, well – yes, you know, we had put a few heifers – a lot of heifers to bulls and they were just calving and that was our plan to, like, run up a debt and – and then, you know, have over a thousand head of cattle so we would have something to sell and then start reducing our debt. That was the plan.

15 Now, some time in 2012 did you get a letter from Bankwest telling you that the bank manager wasn't going to be your bank manager any more?---Yes, I did. Yes.

20 And was anything else said in that letter?---Yes, they just said I had another bank manager.

Now, what did you think when you got that letter?---I was a bit amazed. You know, I was looking for a long-term relationship with – that's what I'm sort of used to, yes. It was a bit of – I was quite surprised that he – that he had moved on, yes. I did go and question where he was, and – and I was just informed that he had moved on and I had another manager, yes.

25

And did you have any contact from the bank manager himself?---No. No. No.

30 And after that you got a new bank manager?---Yes.

And that bank manager was Belinda King?---That's right. That's correct.

35 Okay. And then moving into the next year, in 2013, how was that year for you?---Well, it – things got progressively worse then because the live export ban in August 2012, as I recall, and cattle prices had just completely slumped. In 2013 we – yes, we – well, it was later on in 2013, but – you know, we sold some heifers for only 80 cents a kilo then. And had it gone from six inches of rain in January, and we never – just had nine inches for the rest of the year. We just sort of went from virtually floods and we had no rain in January and no rain much – no rain in 2012, and hardly any rain in 2013 either. They were pretty tough years.

40

And in early 2013 did Bankwest close one of its branches near you?---Yes, they did.

45 Which branch was that?---The Toowoomba branch.

And where did your account move to?---It moved to a place called Geebung.

- Okay. And did it stay in Geebung?---No. No. No.
- How long was it at Geebung for?---I can't really recall but only three or four months. It might be six months. It wasn't very long. Three months.
- 5 And where did it move to after that?---Somewhere in Brisbane. I can't remember where the office is there, yes, but they moved to another office in Brisbane, yes.
- And did you have one bank manager during that period?---No, I had quite a few.
- 10 How many do you think you had, Mr Ruddy?---Three.
- And how did you find the changes in the bank manager in that period?---Well, it was confusing. Like, you – you know, when you're sort of in the drought and cattle prices are totally depressed and you can't sort of go and talk to anyone, they're in Brisbane and they're just – yes, I'm used to having a bank manager ring up, he comes out and sees me, we have a cup of tea, we have a drive around and we come to a decision about things, you know. That's how it's been all my life, since I was 23.
- 15
- 20 Did any of the bank managers come to visit you at the farm?---No, no, never.
- So how did you talk to them?---On the phone.
- Okay. Now, at the same time were you continuing to increase your overdraft?---Yes, we were, yes.
- 25
- And in May 2013 did Bankwest talk to you about doing another valuation of your properties?---Yes, they did.
- 30 And what did you say to Bankwest when that was raised?---I told them I – that I didn't need a valuation till 2014, that that was what I was told.
- And what was Bankwest's response to that?---They said if – if they thought the property had gone down in value, that they were entitled to call for another valuation, and I would have to pay for it, yes.
- 35
- And did Bankwest speak to you about who would do the valuation?---Yes, they did. They did ring – they did speak to me about it, yes, told me who was doing it, yes.
- 40 Okay. And you said they told you you would need to pay for the valuation?---Yes. Yes.
- Do you remember how much Bankwest told you you would need to pay?---\$6600.
- 45 And what did you think about that?---I wasn't too happy. I need that money to buy lick and fodder – not so much fodder but with mulga we feed them a loose lick, high protein loose lick to help digest the mulga.

Can you explain for those of you who don't know what lick is, Mr Ruddy?---It's a – it's a mixture of minerals, like a sugar form, I suppose, and – and it's a high protein and helps digest the gut and the microbes in the gut. Yes. Yes. It's quite a different – it's a pretty big thing with mulga to give them that because it's a hard-chewing leaf they eat and they need – they need that lick, as I call it, to – to digest the mulga, yes, and they do quite well on it, actually, yes.

So what was the condition of your cattle at this stage?---They weren't too bad. They were poking along all right, yes.

Now, before you received the valuations in late May 2013, did you get a letter from Bankwest telling you that they were going to increase your facilities?---Yes, I did, yes.

Okay. And did Bankwest then go ahead and get the valuations?---Yes, they did.

And did they charge you for the valuations?---Yes, they did.

And as a result of being charged for the valuations, were you able to buy the lick for your cattle and do the other things that you described before?---No. Well, it was taken straight out of our bank account without – we weren't even informed. Like, we knew we were going to pay for it but we thought we – you know, it might be – you know, give us a month, 30 days or 60 days to get organised but, yes, bang she came straight out of our bank account, and I had no money to buy – well, I couldn't pay my bills, so I couldn't buy lick. That's when I started home brewing. And I'm quite good at it now.

Did Bankwest ever give you a copy of the valuation reports?---Yes, they did.

And when were you – when you were given the valuations, did you see how much your properties had been valued at?---Yes, I did.

And do you remember what the valuations were?---Yes. Sunrise was valued at 750,000, and Arranfield was valued at 900.

Now - - -?---I think – that's as I recall.

You said at this time as a result of the money being taken straight out of your bank account you didn't have money to buy lick for the cattle?---Mmm.

What was the consequence of that?---Well, we – they – you know, some of them got – lost condition pretty bad and we lost about 80 head then over the next three months as a consequence of that until we sort of – I went – I got a job contracting, got a bit of money coming in, yes.

45

And what was your financial position generally at that time? How were you going with meeting your bills?---Well, we were struggling, yes. It's a – you know, it was a struggle, yes. Yes.

5 And after Bankwest got the valuations for 750 and 900, what happened next?---As I recall, they informed me that I would have to sell one place, yes, and – and try and get – get my – whatever it is – loan valuation ratio loan whatever it is, LVR correct because I was, you know, way over the bank's limits.

10 And how did you react when you got that news?---I wasn't very happy about it, no. You know, I – yes. At that stage then places had start coming down in value to what they were. So – and – you know, when you only got – in the middle of a cattle slump in the middle of a drought having to sell a place you're not going to get your full potential for what it's worth.

15 Did they tell you which property they wanted you to sell?---Well, they suggested Sunrise because it was easier to sell. At that stage we wouldn't have been able to sell the place at Charleville. You know, it would have been more difficult to sell it. But Sunrise being closer into town where it's more populated, it would have been an  
20 easier place to sell.

Did you have any thoughts about whether you would be able to sell Sunrise?---Well, we thought we would, yes. You know, we were – we put it on the market for 900,000. Yes, we thought it would sell for that, actually.

25 So after the bank told you that – what you've just described that you weren't within their limits any more and you needed to sell a property, Sunrise, did you then get letters of variation to your facilities from the bank?---Yes, we did, yes.

30 And in those letters were you asked to make a \$50,000 debt reduction by the end of 2013?---Yes. Yes, I did, yes.

And you were asked to sell Sunrise?---Yes, I was, yes.

35 And did you agree to those terms?---Yes, I did, yes.

Why did you do that?---Well, I thought we had no option, you know. We were in a bit of a corner.

40 And you proceeded to try and sell Sunrise?---Yes, we did, yes.

And you said you put it on the market for 900. Is that what you said?---900,000, yes.

45 Now, later that year, did you have an issue with your dozer?---Yes. Well, contracting, yes, I burnt – I burnt my contracting machine, yes. I never had – with money being a bit short and everything, I know it was pretty foolish, but, yes, we

didn't – we didn't worry about insuring it, we cut costs and I lost 100 grand worth of machine, yes.

So you were using the dozer to make income off - - -?---Off-farm.

5

Off-farm?---Yes, off-farm, yes.

But the dozer was destroyed?---Destroyed, yes.

10 And what were the consequences of that for you?---Well, we lost off-farm income, and then I had to – to finish the job, I had an older tractor at home which I – I – because I had two and then I had to – yes, I was feeding 300 head with a chainsaw. I was cutting scrub with a chainsaw and I put my other dozer to work. It only did 500 hours and blew the motor up. So – yes, and then it sat for a while too, yes.

15

And at the end of that year in December 2013, did you get a call from a person called Nicky Adamson at Bankwest?---Yes, I did.

Did she tell you that she was now in charge of your file?---Yes.

20

And that your file had been moved to group credit structuring within Bankwest?---Yes.

And early the following year did you tell Bankwest that there was an interested party for Sunrise?---Yes, there was.

25

And did Nicky Adamson get back in touch with you after that?---Yes, she asked how it went, and I said they bought another place about 30 kilometres away, yes.

30 And did she make any observations about the price that you had put on Sunrise?---Yes, she thought it was a bit unrealistic and we should bring our price down.

35

And what did you think about that?---Well, yes, I – well, I thought – I suppose I thought it was worth more than what it was, but I – you know, at that stage I didn't – I needed to sell for that because if I had sold it for, you know, like – brought the price down to 650, well then me LVR would still be the same. I would still be – then I would have – I would just have to keep selling. And I only had two places. And they would have both gone, I reckon.

40

Did you end up receiving some interest in Sunrise?---Yes, we did. We had interest, but, you know, as I say, we just – just couldn't get it over the line.

Yes. So no firm offers at that stage?---No, no firm offers, no.

45

You weren't able to sell at that point?---Weren't able to sell, no.

So during 2014, did you keep speaking to Bankwest about your facilities?---Yes, I did, yes.

5 And in October of that year, did Bankwest tell you that if you didn't reduce your debt it would offer farm debt mediation before taking action to enforce its securities?---Yes, they did.

10 And around that time did you start getting assistance from someone else in dealing with the bank?---Yes, I did, yes.

And how did you find that person?---Really – really helpful, yes.

15 And how did you come across that person?---I was just recommended to her from – from the neighbours up the road, yes, who used – used a company that she was working with, but when we went with Tasha we were just working on our – with her, yes.

20 Did she help you lodge a dispute with the Financial Ombudsman Service?---Yes, she did.

Did you receive a recommendation from the ombudsman in about August of 2015?---Yes, we did, yes.

25 And that recommendation was partly in your favour and partly in the bank's favour. Is that right?---Yes, that is right, yes.

And you've annexed that recommendation to your statement behind tab 3 FOS.0030.001.4238?---Yes.

30 And we see at 4329, when it's brought up on the screen – 4239, I'm sorry – so FOS.0030.001.4239. I am going to say the number again in case I have not said it correctly, FOS.0030.0001.4239. There we are. The recommendation. And could we have 4239 and 4240 on the screen together. So in the recommendation, the FOS case manager found that Bankwest had over-valued Sunrise in October 2011. Do you see that under the heading:

35

*Was the FSPs September 2011 finance offer inappropriate?  
The FSP over valued S in October 2011 but this did not render the lending inappropriate*

40 Do you see that?---Yes, I can. Yes, yes.

And down the bottom of the page we see that the case manager found that:

45 *Given the flawed September 2011 valuation for the Sunrise property, Bankwest should not have relied on the 2013 valuation to require you to make a principal reduction to debt and to sell the properties.*

- ?---Yes, that's right. I see that, yes.
- And the ombudsman recommended that you be paid \$2000 to compensate for your non-financial loss. Is that right?---Yes, that's right, yes.
- 5 And the ombudsman also found – or the case manager for the ombudsman – because this was a recommendation – found that Bankwest was entitled to take recovery action?---Yes, that's right.
- 10 Did you accept that recommendation?---No, we didn't. We rejected it, yes.
- And why was that, Mr Ruddy?---We – we just weren't happy with – with the decision, and, yes, we – yes, weren't happy at all, really. Yes.
- 15 Did your dispute then move to a formal determination by an ombudsman?---Yes, it did. It moved on to another one, yes.
- And if we turn to your fourth exhibit, FOS.0030.0001.5212, we see that you've annexed a copy of the determination that was made by the ombudsman?---Yes.
- 20 Now, if we turn to 5213, the first page inside the determination, we might need to go one more page over, Mr Ruddy?---Yes.
- We see that the ombudsman essentially adopted the same findings that had been made in the recommendation?---Yes.
- 25 But there were some changes that related to the charging of interest?---Yes, that's correct.
- 30 So the ombudsman found that the case manager had erred in concluding that Bankwest ought to be allowed to charge interest at a particular rate?---Yes.
- Now, did you accept the determination?---No, we rejected that one too, yes.
- 35 And why was that, Mr Ruddy?---Again, we – we just weren't happy with the outcome. We thought – yes, we thought we would have done a little bit better, you know, like – yes, just – just wasn't happy with the outcome.
- Now, this – if we just have a look at 5214, we see that had you accepted the determination, Bankwest would have been required to reduce your overdraft account balance and credit \$2000 to your overdraft account?---Yes, that's correct.
- 40 Now, you didn't accept the determination?---No.
- 45 But did Bankwest go on to do either of those things?---No, no, they didn't, no.

Okay. Now, did you then go to farm debt mediation in August 2016?---Yes, we did, yes.

5 How did you find the farm debt mediation day, Mr Ruddy?---It's a pretty stressful day, yes. It – you know, it's something you would rather not do, but – but, yes, anyway, we – at that stage it was our only choice.

10 And did you have anyone assisting you at the farm debt mediation?---No, just Tasha Keys and myself and my wife.

And did the bank have lawyers at the mediation?---Yes, they did, yes.

And how long did it go for?---Most of the day, actually, yes.

15 And at the end of the day, did you reach a general agreement?---Yes, we did.

20 And how long did it take for that agreement to be turned into a formal agreement after the mediation?---Probably about a month, I guess. As I recall – I think it was – the mediation was in August and I think we signed the deed in October, if I remember correctly.

Now, by the agreement that you signed you agreed to sell Sunrise within six months?---Yes, we did, yes.

25 And to pay Bankwest 75 per cent of the proceeds of sale from Sunrise?---That is correct.

30 And to pay Bankwest an additional \$410,000 to discharge the mortgage over Arranfield?---That is correct.

And if you did those things, Bankwest would discharge its mortgages over the two properties?---That is right.

35 And release you and your son from any further liability?---That is right. That's correct.

40 Did you feel that you had a choice as to whether to agree to that proposal?---No, we never had a choice – well, we would have had a choice, but, you know, that – that was – yes, we – yes, that – well, that was a mediation and – and we had no choice. That was it, yes.

45 What did you think would happen if you didn't reach an agreement following the mediation?---Well, I had planned I was going to try and sell cattle and – yes, I was going to try and raise enough money and go straight to the Supreme Court, actually.

And did you sign the deed of agreement, Mr Ruddy?---Yes, I did.

- And having signed it, did you then proceed to sell Sunrise?---Yes, we did.
- When did you do that?---We sold that in – as I recall, in April 2017.
- 5 And how much did you sell it for?---750,000.
- And did Bankwest receive some of the proceeds of sale?---Yes, they did. They got – of the – of the net amount, 75 per cent.
- 10 And did you have to borrow more money to reach your other obligations under the agreement?---Yes, we did, yes. Yes. Yes.
- And who did you borrow that money from?---I – I couldn't – couldn't get money from the bank, so I had to borrow 160 grand off my mum and I sold a dozer to make up the other money.
- 15 And were you then, having paid that money, released under the terms of the deed of agreement?---Yes, I was.
- 20 Do you have any facilities with Bankwest now?---No, we don't.
- Do you have any finance with any other bank?---I still do cattle leases with BOQ. That's all.
- 25 And how has it been for you and your farm operations to not have finance?---Extremely difficult. You know, like, you need a bank, you know, to carry on and help you out. It's pretty hard when you've got no bank.
- How are you managing to fund your farming operations now?---We're probably selling cattle when they're not ready and I'm contracting. I've gone back contracting.
- 30 And how many cattle are you running now?---About 300.
- 35 And what's the largest number of cattle you've been running in the past?---Well, at the time of the dispute we were about 950 – well, not about, we had 950 branded cattle.
- And would you say that you're getting back on your feet now, Mr Ruddy?---Pretty steadily. We're still here. That's the main thing, you know, and – and, yes, it has just been – been pretty – well, it's not only me. A lot of farmers have had a difficult time. It's – you know – yes, it's – it's just the compounding things like, you know, live export ban on cattle was a big thing, and the cattle market crash, and like – you know, your equity is eroded straight away and farms are hard to sell, there's no confidence in the market. It just makes things very difficult but you've got to have – you need – you know, you need a bank, in my opinion, anyway, to be a little bit more forgiving and if they offer you a facility help you ride it out. In 2014 if they had
- 40
- 45

have valued everything up and sold it and I had walked out with just my swag and my stock book and my saddle over my shoulder that wouldn't have worried me because they stuck to what they said, but they didn't.

5 Thank you, Mr Ruddy. I have no further questions.

THE COMMISSIONER: Yes, Mr Scerri.

10 MR SCERRI: We don't have any cross-examination, your Honour – Commissioner.

THE COMMISSIONER: Yes. Thank you very much, Mr Ruddy, for coming. You may step down.

15 <THE WITNESS WITHDREW [12.57 pm]

THE COMMISSIONER: I assume it would be the most efficient thing to stop and come back at 2 o'clock, would it, Ms Orr?

20 MS ORR: Yes, thank you, Commissioner.

THE COMMISSIONER: 2 o'clock.

25 **ADJOURNED** [12.57 pm]

30 **RESUMED** [2.01 pm]

THE COMMISSIONER: Yes, Ms Orr.

35 MS ORR: We turn, Commissioner, to a case study about Bankwest. And I'm sorry – we're in the case study about Bankwest. Mr Ruddy was our first witness in that case study. We turn now to the second witness in that case study, Ms Sinead Taylor.

THE COMMISSIONER: Yes. Yes, Mr Scerri.

40 <SINEAD TAYLOR, AFFIRMED [2.01 pm]

45 <EXAMINATION-IN-CHIEF BY MR SCERRI

THE COMMISSIONER: Do sit down, Ms Taylor. Yes, Mr Scerri.

MR SCERRI: Ms Taylor, is your full name Sinead Taylor?---Yes, it is.

And is your business address 300 Murray Street, Perth?---That's right, yes.

5 And are you the executive general manager, personal and business banking of Bankwest?---Yes, I am.

Have you received a summons to attend this Royal Commission?---I have.

10 Do you have that with you?---I do.

I tender that, Commissioner.

15 THE COMMISSIONER: Exhibit 4.91, the summons to Ms Taylor.

**EXHIBIT #4.91 SUMMONS TO MS TAYLOR**

20 MR SCERRI: Thank you, Commissioner. And Ms Taylor, have you made a statement on 24 June – which I think was last Sunday – with an ID number CBA.9000.0070.0001?---Yes, I have.

25 And is that a statement of 38 pages?---Yes, it is.

And is that your signature on the last page?---Yes, it is.

Are the contents of that statement true and correct?---Yes, they are.

30 We tender that, Commissioner.

THE COMMISSIONER: Exhibit 4.92, the statement of Ms Taylor, 24 June '18.

35 **EXHIBIT #4.92 STATEMENT OF MS TAYLOR DATED 24/06/2018  
(CBA.9000.0070.0001)**

40 MR SCERRI: Thank you, Ms Taylor. And Ms Orr will ask you some questions now.

THE COMMISSIONER: Yes, Ms Orr.

45 <CROSS-EXAMINATION BY MS ORR

[2.03 pm]

MS ORR: Ms Taylor, we've heard that you're the executive general manager of personal and business banking at Bankwest?---Yes, that's right.

Bankwest is a division of CBA?---Yes, it is.

5

And you've been in your position for about a year, since July last year?---That's right, yes.

And you've been put forward by Bankwest to answer questions about its agribusiness operations generally, and about Bankwest dealings with Mr and Mrs Ruddy?---That's right, yes.

10

Were you present for the evidence given by Mr Ruddy before lunch?---I was, yes.

15 Thank you. Now - - -

THE COMMISSIONER: Ms Taylor, you may have to keep your voice up rather more, I think. You have a naturally soft voice. So you may need to be bellowing?---Okay.

20

MS ORR: You heard from Mr Ruddy that a number of THE issues that he and Mrs Ruddy experienced came to a head in about 2013?---Yes.

That was the year in which the number of agricultural customers at Bankwest who were experiencing difficulties with servicing their loans spiked, wasn't it?---It was, yes.

25

We see from your statement, at paragraph 28, CBA.9000.0070.0009 – and if we could have that page and the subsequent page on the screen at the same time – we see from the table within your paragraph 28 that in 2013 there was a noticeable increase in the percentage of Bankwest agricultural clients who entered monetary and non-monetary default?---Yes.

30

If we look first at monetary defaults, the percentage of Bankwest clients who had one or more facilities in monetary default from 2009 to 2012 sat at around two to 2.5 per cent?---Yes.

35

And in 2013, this jumped to 6.54 per cent?---Yes, that's right.

40 And then the percentages began to taper off again?---Yes, they did.

And if we look at the figures for non-monetary defaults, we see a similar trend?---That's right, yes.

The percentage of clients in non-monetary default was between .5 and one per cent from 2010 to 2012?---Yes.

45

And in 2013 it jumped to 1.8 per cent?---Yes, it did.

And after 2013, the figures returned to their previous levels, although they appear to have arisen – to have risen again last year?---Yes, that's right.

5

Now, what do you put the spike in monetary and non-monetary defaults by agricultural customers of Bankwest in 2013 down to?---So in 2013, there were a number of influences – I believe that if you look at WA to start with, given that was a high proportion of our customer base, there were serious droughts on the eastern wheat belt, and there had also been issues with agricultural customers throughout Australia from the perspective of external environmental events such as drought, floods and livestock issues.

10

And we see from paragraph 25 of your statement, which is on the previous page, 000 – I'm sorry, 0008 – and if we could have 0008 and 0009 on the screen at the same time – we see there that there was also a significant spike in customers transferred to Bankwest's group credit structuring arm or GCS around that time?---Yes, that's right.

15

So GCS you tell us in your statement is the specialist division of CBA and Bankwest that's responsible for the management of customer loans that have been classified as troublesome or impaired assets?---That's right.

20

Now, the numbers of agricultural customers transferred to GCS were reasonably low in 2009 and 2010?---Yes.

25

And they started growing in 2011 and 2012?---Yes.

And between 2012 and 2013 there was a jump from 67 a year to 97 a year?---That's right, yes.

30

So 2013, again, was the high watermark before the numbers began to taper off?---That's right.

And that trend makes sense because the number of customers transferred to GCS is likely to be linked to the number of customers in monetary and non-monetary default. Is that right?---It is right, though they might not correlate exactly. Just because you're in monetary or non-monetary default doesn't mean you will necessarily be transferred automatically to GCS.

35

40

Are there any other factors you would point to to explain that spike in 2013 -- --?---So -- --

The transfer across?---So I think the other element would be the tightening of credit standards at Bankwest over that time. Post the acquisition of CBA there was – there were changes to policy and process that would have impacted over time the transfer around about that 2013 mark.

45

Then if we look at the table that you've given us at paragraph 36 of your statement – that's CBA.9000.0070.0012 - - -?---Yes.

5 - - - we see there's also an increase in enforcement action by Bankwest around that time, 2013?---There is, yes.

So before 2013 and since 2016, Bankwest has not taken enforcement action against any more than four agricultural customers in one year?---That's right.

10 But in 2013, '14 and '15 the numbers were six, nine and six?---That's right, yes.

15 And what do you put the spike in enforcement action in those years down to?---It's like – I just clarify I don't actually work in GCS, so this is my view from reviewing the file. I would assume that given the increase in numbers of customers transferring through to GCS, that over time there would be the requirement to – to, you know, if things were not able to be worked out, to take that action. It's obviously not the bank's preference to – enforcement is the last resort but that's what I would assume would be the driver recognising that it is under a per cent of our agricultural customer base.

20 I'm sorry, I just missed last bit, recognising that it is?---Less than one per cent of our agricultural customer base.

25 Thank you. Now, at paragraph 33 of your statement we have another table at 0011. Which shows us the number of complaints made by Bankwest's agricultural clients to the Financial Ombudsman Service?---Yes.

And those complaint numbers also increased around the same time?---They did, yes.

30 So in 2014 we see the number of complaints from agricultural customers was nine as opposed to five in 2013, and two in 2015?---Yes.

35 And more of the complaints lodged in 2014 proceeded to recommendation or determination than complaints lodged in any previous year or in any year since?---Yes.

40 And of the three recommendations or determinations that you identify as having been made wholly or partly in the customer's favour as against Bankwest since 2008, one related to a complaint originated in 2013, and two to complaints from 2014?---Yes.

45 Can you explain why that would be the case?---I don't have a specific explanation for that. I would assume, again, if you have more customers that are through – you know, going to GCS, possibility of enforcement, that there will be an increase – subsequent increase in complaints.

Have you looked at the FOS recommendations or determinations that you've set out, the three of them in paragraph 32 of your statement - - -?---Yes.

- - - there, Ms Taylor. You're familiar with those?---Yes.

Okay. Now, at around the time of these spikes, Bankwest made a decision to centrally service rural business customers outside Western Australia, and close the majority of its rural business centres?---Yes, it did.

Is that right?---Yes.

And why did Bankwest choose to do that?---So the expansion into the east coast agricultural market took place primarily under HBOS and over time post acquisition. The view was that whilst Bankwest had expertise in agriculture in WA having 120 year history there, that the agricultural market and the more rural and regional markets in the east coast were well served and better served by – by other banks that had more local knowledge and presence, and as a result the decision was taken to gradually move out of those locations. I should clarify, it probably doesn't read the way it's intended. We didn't have a goal to centrally manage customers out – east coast agricultural customers through WA because that wouldn't be practical. We have a small number of customers who have either not been able to refinance or have chosen to stay with Bankwest. There are 35 of them that are managed out of WA.

I see. And did the decision to centrally service the east coast agricultural customers contribute to any of the matters that we've just discussed?---No, I wouldn't – I don't believe they would have. They were – each customer would have still had a relationship point of contact, they would still be managed, and I don't believe it would have impacted on those numbers, no.

I see. All right. Now, I want to turn to Bankwest's dealings with Mr and Mrs Ruddy. The Ruddys became customers of Bankwest in October 2011?---Yes, that's right.

And Mr and Mrs Ruddy, as you have heard from Mr Ruddy, moved across from Rural Bank?---Yes, they did.

And Bankwest knew that the Ruddys were valued customers of Rural Bank?---I have seen that in the file, yes.

Yes. And Bankwest therefore considered that it needed to price its offer to the Ruddys accordingly?---So I think from my recollection of the review of the file the reference to pricing related to the competitive nature of Rural that they would counter an offer and, therefore, yes, we did put forward an aggressive price.

An aggressive price. All right. So can we look at one of your exhibits. It's exhibit 84 to your statement, CBA.0001.0374.0213. So this is a credit risk submission put together by the bank manager, the first bank manager, who is the subject of a non-publication direction, that Mr and Mrs Ruddy had at Bankwest prior to their move to Bankwest in October 2011?---Yes.

So we see it's August 2011 that this document was produced?---That's right, yes.

Could we have that taken off the screen, please. You have a copy of that document  
---?---I do, yes.

5

--- in front of you. There was a name that ought to have been redacted in the document and was not. So I apologise but I will – at least while I'm dealing with that page of the document, not have the document on the screen. Now, as I had said to you, this was a credit submission prepared in August ahead of the Ruddys' move across to Bankwest in October of 2011?---Yes, it is.

10

And if we – if we turn to the next page – we will turn to the next page which is 0214, which should be able to be brought on the screen because there's no reference to the name of the bank manager in that page. Now, prior to the loan facilities being entered into, we see that the bank manager under the heading Pricing Approval puts in this document:

15

*Pricing is within the head of Rural and Regional approval level and has been submitted for approval. A competitive pricing margin has been implemented due to the competition from existing bank. Submitting manager is aware that the applicant's current banker (Mark Pain) will be willing to aggressively adjusted margins to retain the connection.*

20

?---Yes.

25

So that supports what you were saying about the aggressive nature of the pricing that Bankwest came up with for the Ruddys' business?---Yes.

30

And you will see on the previous page – but we won't bring it up on the screen – that Bankwest was aware that the Ruddys had three separate facilities with Rural Bank which totalled \$1.02 million?---Yes, that's right.

35

A \$425,000 facility, a \$100,000 facility, a \$170,000 facility, and a \$325,000 facility?---Yes, that's right.

And the decision for which the bank manager sought approval in this document was to refinance those facilities and provide an additional \$100,000 of credit for the purchase of livestock?---That's right, yes.

40

Now, at the time of this document, Bankwest contemplated that there would be two types of security taken?---Yes.

And one was Arranfield?---That's right.

45

And this document lists it as having a registered market value of \$1.1 million?---Yes.

And the other was Sunrise which was listed as having a registered market value of \$1.2 million?---That's right, yes.

5 Now, if we turn to 0217, we will see that based on those values of the two properties, which are listed in the table in the middle there, Bankwest estimated the LVR – or the loan to value ratio – at 48.7 per cent. Do you see that under the descriptions of the properties on the left-hand column?---Yes, I do.

10 Now, this was considered, we see in this document, by Bankwest to be a low LVR?---Yes.

And if we turn to 0220, we see the reference there under Strengths:

15 *Security position low LVR.*

So that was considered to be a strength of the loan?---It's a – it's a contributing consideration in the loan.

20 Well, we see there strengths and weaknesses under the heading SWOT Analysis. What's the SWOT analysis?---So that is yes, the strengths, weaknesses, opportunities and threats.

25 Thank you. Now, there are a number of other strengths of the loan listed there, including the Ruddys' sound planning skills?---Yes.

Now, the submission at a number of points refers to Mr Ruddy's lifetime experience in the cattle industry?---Yes, it does.

30 And in Bankwest's assessment of the weaknesses of, and threats to the loan on this page, we see that Bankwest focused principally upon factors outside the Ruddys' control. So drought conditions returning, a decline in the red meat market, and any illness or sickness to Mr Ruddy?---That's right, yes.

35 So as we've heard from Mr Ruddy, the bank manager who wrote this credit submission in August 2011 was instrumental in bringing the Ruddys across to Bankwest from Rural Bank?---As far as I can tell from this, yes.

40 Yes. And you heard Mr Ruddy's evidence about if this had not happened, if the bank manager hadn't turned up offering this business, he says he would have sold Sunrise and not increased his debt position?---He did, yes.

Now, Mr and Mrs Ruddy weren't the only customers that this particular bank manager brought across from Rural Bank to Bankwest, were they?---No, that's right.

45 The bank manager had previously worked at Rural Bank?---Yes.

- And how many customers did he bring across from Rural Bank to Bankwest?---I don't know that exact number, I'm sorry.
- Are you able to give an estimate?---Five or six.
- 5 Now, what were the bank manager's KPIs at the time that he moved the Ruddys across to Bankwest?---The bank manager's KPIs related to – he had financial KPIs, risk KPIs, there was a customer satisfaction KPI, and a productivity KPI.
- 10 And what were the financial KPIs?---The financial – a breakdown of each one or just the weighting?
- Both, thank you?---Okay. So asset growth was one of the financial KPIs, and I believe revenue growth was the other.
- 15 Now, I will show you a document about these KPIs. It's CBA.0001.0396.2483. Now, unfortunately, this is quite difficult to read. I don't know if – I assume you've looked at this document before - - -?---I have, yes.
- 20 - - - giving your evidence, and we will do our best to make it clear to others. Your counsel would like to provide you - - -?---Okay.
- - - with a hardcopy to assist. And I have suggested it might also assist the Commissioner to receive one as well?---Thank you.
- 25 So this shows the KPIs for financial year 2012 which was the year that the Ruddys moved across to Bankwest?---Yes, that's right.
- And it's the KPIs for senior relationship managers, such as the bank manager in question?---I believe it actually is for all of the rows at the bottom of the page, but the senior relationship manager is listed, yes.
- 30 Yes. Yes. Now, the KPIs for senior relationship managers were heavily weighted towards profitable growth, weren't they?---They were, yes.
- 35 Now, profitable growth is the first five columns, do we see that? You see – and if we can expand it on the screen, we see the heading Profitable Growth right at the top of the page, and then five columns underneath that?---Yes, that's right.
- 40 On the left-hand side at the top. Now, the KPIs appear to be divided into the following categories: profitable growth, managing risk, customer, and people. Is that right?---Yes, that is right.
- And 20 per cent of the KPIs were associated with managing risk?---Yes.
- 45 And 10 per cent were associated with people?---Yes, that's right.

Does that category refer to internal interactions with Bankwest staff?---Yes, I believe it related to people engagement and team work, yes.

5 And 10 per cent were associated with customer satisfaction?---Yes, that's right.

Now, if it assists the Commissioner in particular with his hardcopy of the document, we see those percentages at the bottom of the page. We see the types of KPIs listed at the top of the page and the figures at the bottom of the page. So 20 per cent for managing risk, 10 per cent for people, 10 per cent for customer satisfaction, and the remaining 60 per cent were associated with subcategories of profitable growth. Is that right?---Yes, that's right.

So there are five categories within profitable growth?---Yes.

15 And the most significant subcategory under profitable growth was asset sales targets?---Yes, that's right.

And that KPI contributed 30 per cent of the bank manager's KPIs for the 2012 financial year?---Yes, it did, yes.

20 So nearly a third - - -?---Yes.

- - - of the KPIs. So Bankwest principally judged the performance of employees like this bank manager by reference to whether they were making sales?---So they did in terms of the weightings of the KPIs but I do understand that the risk metric, the 20 per cent risk metric, there was a requirement to meet your risk metric as well.

So that's the managing risk KPI. Is that - - -?---Yes, that's right.

30 - - - what you are referring to?---Yes.

So you had to meet that, but otherwise your performance was judged principally by reference to making sales?---Yes.

35 And these were important to whether or not the bank manager received a bonus, or what was referred to within Bankwest as a short-term incentive opportunity?---So they would have – again, I wasn't there to be as familiar with this but my understanding is that across all of those measures, you were required to – to meet in each individual discrete area, so customer satisfaction, as well as your people, and the risk, and the – as well as financial. So you couldn't just meet your financial targets and receive an STI.

45 But you needed to meet your financial targets to be eligible for the bonus didn't you?---No, you didn't. There was no financial gate opener.

So were any of these gate openers?---Risk was the gate opener.

Risk was the gate opener. So you needed to satisfy that one. Then how did the other KPIs interrelate with the bonus?---So what happens is from the perspective of – as an example, financial, you would – we would look across each of the individual metrics, someone would be rated against how they performed against each of those. It's a weighted out scorecard so you would – assuming that someone had performed reasonably well across all of their measures, they would have been – and met their risk measures, they would have eligible to be – for an incentive. How that actually works in practice is you are set a potential for your STI. If you were a meets expectation, which I believe this banker was, that would mean you had done okay across all of your metrics and had – you know, it wouldn't have been that you had exceeded all of them, and you would then get roughly – between 30 and 50 per cent of that potential.

Of the bonus, of the potential bonus?---Of the potential. So the potential is a figure. What you – what you're eligible to receive depends on how you perform across all of those KPIs.

Yes, I see. The KPIs which we've seen are about a third rated towards your sales?---Just because you don't meet the sales or financial objectives doesn't mean that you're not eligible for an STI.

I understand. Now, what are the current KPIs for bank managers dealing with agricultural customers?---So the current KPIs financial is 40 per cent. There is a – the risk is not a KPI. It's actually called a risk objective, and it is a – it is a gate opener. So you can't – you're not eligible for any performance incentive if you don't meet your risk objective which is very specific, and you also have to meet your behavioural objectives as well. So we have a set of behaviours that we expect people to operate within. So we have financial at 40, we have productivity, and we also have customer and we do have the – the people, which is the people and culture team work.

So is the financial KPI still the largest of any of the KPIs?---It is the largest, yes. Worth noting that the potentials – the potential STI now is much lower than it was at the – at the time that we're talking about in 2012.

So the amount of the bonus has decreased?---The amount of the potential has decreased and therefore the bonus must, yes.

Yes, I see. So 40 per cent of the KPIs are towards financial matters, including asset sales targets such as we have here?---That's a 10 per cent measure.

And what are the other subcategories within the financial metrics?---So there's a revenue measure and there is a profitability measure. So PACC.

And what's the weighting for each of those, Ms Taylor?---It is 20 for revenue and 10 for the other.

10 for profitabilities?---Yes.

And what does profitability measure?---Profit after capital charge.

5 And revenue?---Revenue is the revenue of the actual portfolio.

And the asset sales targets?---Is the proportion of loans that would be written on the – on the portfolio.

10 Now, you said – I will tender that document, Commissioner.

THE COMMISSIONER: Rural and regional banking KPIs for financial year 2012, CBA.0001.0396.2483 will be exhibit 4.93.

15

**EXHIBIT #4.93 RURAL AND REGIONAL BANKING KPIs FOR FINANCIAL YEAR 2012 (CBA.0001.0396.2483)**

20 MS ORR: Now, with the particular bank manager who dealt with the Ruddys, you said before that he had done okay. He had been ranked meets expectations?---Yes, he had.

25 And where does that sit in the spectrum?---So in the spectrum which is actually listed on the left-hand side, you have exceeds, you have meets and sometimes exceeds, and you have meets and you have does not meet.

So did that put him somewhere in the middle, is that - - -?---Very much the middle, yes.

30

The middle. Okay. Could I ask you to look at a document which is CBA.0001.0393.0082. Have you seen this document before, Ms Taylor?---Yes, I have.

35 So this document relates to business CEO awards given by Bankwest for rural and regional champions on 18 August 2011?---Yes, that's right.

40 Now, if we could turn within that document to 0083. Now, the names of all of the rural and regional champions have been redacted, but you can see, can you not, Ms Taylor, that the second last entry on the page next to Toowoomba, Queensland relates to the bank manager?---Yes, that's right.

So for the 2010 to 2011 year, the bank manager was named a rural and regional champion?---Yes, that's right.

45

And Bankwest, we see there, recognised his achievements because he had achieved 134 per cent of his sales target in the 2011 financial year?---Yes, that's right.

His target was \$25 million in sales, and he had achieved sales of 33.5 million?---Yes, that's right.

5 And he did this, the document tells us, by processing in excess of 60 applications, most of which were new to bank clients?---That's right, yes.

10 So do you still say, Ms Taylor, that he was doing okay?---Yes, because – well, if you base it on his actual performance rating and the resultant STI that would be paid, he was a meets expectations. Therefore, despite the fact that he had had, obviously, very strong sales results, this would have been tempered by his performance across other areas.

15 I see. So his sales results were strong enough that he was named one of a small number of rural and regional champions by the CEO that year?---Just to clarify as well, the CEO was the head of the business bank. So it was just a title of the business bank. It wasn't the overall Bankwest.

I see?---It was specific to the rural and regional team.

20 Yes, I see?---It was their awards.

I see. But still a significant achievement, 134 per cent of his sales target?---Yes. Depending on what his sales target was.

25 Well, we see what his sales target was. It was 25 million?---Yes.

And he exceeded that by getting to 33.5 million?---Yes.

30 I tender that document, Commissioner.

THE COMMISSIONER: Rural and regional champions, August 2011  
CBA.0001.0393.0082, exhibit 4.94.

35 **EXHIBIT #4.94 RURAL AND REGIONAL CHAMPIONS, AUGUST 2011  
(CBA.0001.0393.0082)**

40 MS ORR: What was the prize for being a rural and regional banking champion, Ms Taylor?---I understand they went on a trip to Hayman Island.

I see. All right.

45 THE COMMISSIONER: Was there an equivalent award made for someone who exceeded expectations on the whole scorecard?---This was the only set of awards that I'm aware of at that time.

The only overt recognition given by the bank was for selling?---At that point it was, yes.

Yes?---It no longer is.

5

MS ORR: Now, could I ask you to look at another spreadsheet, which is CBA.0001.0394.0750. I don't think it will be necessary for the Commissioner to have a copy of this document. The documents from now on should be legible enough to read on the screen. We're just waiting for that document to come up.

10 CBA.0001.0394.0750. I'm not sure how it will work on your hardcopy, Ms Taylor, but what I'm going to ask you about is under tab 2011 of the spreadsheet – and it's row 17 - - -?---Right.

15 - - - which I think will be relatively straightforward to bring up on the screen – I hope will be straightforward to bring up on the screen but I'm not sure exactly how - - -?---I've got it here.

- - - you are going to do that on yours?---I have got it.

20 Perhaps I can ask you some questions because you can see the document and it may not be necessary to bring it up on the screen. Can we see from that spreadsheet that the bank manager's base remuneration was about \$128,000? We're in row 17 in tab 2011?---Yes.

25 Approximately \$128,000?---Yes, that's right.

And in 2010 his short-term incentive plan payments were \$15,000?---Yes.

30 And in 2011 his short-term incentive plan payments were \$35,000?---That's right, yes.

And then we have a column which is column Z which is described potential as percentage of base?---Yes.

35 Do you see that? Can you explain what that column is?---So that's what I referred to earlier, which is the – the STI potential is a percentage of your base salary before super.

40 Yes, I see. So does that mean that the potential for this bank manager was 57 per cent of his base salary?---Yes, that's what that means.

That was the maximum bonus he could obtain?---Yes, that's right.

45 So he received his base salary and up to 57 per cent additional as a bonus?---Yes, that's right.

Now, in the entry that's directly above the bank manager's entry – so that's row 16, column Z, we see that the employee's short-term incentive payment totalled more than 100 per cent of their base salary. Is that right?---[REDACTED] yes, that's right.

5 I am sorry, the witness has just used the name of the person who is the subject of the non-publication direction.

THE COMMISSIONER: Cut it from the transcript.

10 MS ORR: Thank you.

THE COMMISSIONER: Yes.

MS ORR: Now, so above that person, row 16, column Z?---Yes.

15

Do you see that that particular employee has a bonus that totals more than 100 per cent of the base salary? Do I read that correctly?---So they have – it does look like that, yes.

20 And I want to suggest to you that we see that for a number of employees at a number of places in this spreadsheet. And I want to understand whether it was the position that Bankwest employees could double their base income through their bonus payments?---I'm not aware of that having been the case but obviously there are instances on the spreadsheet.

25

There are instances on the spreadsheet?---It would appear there are, yes.

Yes. So it was the case?---I'm not sure that there was a policy but there may have been – well, there are a number of instances where that has happened.

30

Yes. So Bankwest employees could double their base income through their bonus payments?---They could, yes.

Thank you. I tender that document, Commissioner.

35

THE COMMISSIONER: What do I call it, Ms Orr?

MS ORR: Well, it's a spreadsheet recording remuneration packages of bank managers for 2011.

40

THE COMMISSIONER: Spreadsheet remuneration packages Bankwest bank managers 2011, CBA.0001.0394.0750, exhibit 4.95.

45 **EXHIBIT #4.95 SPREADSHEET REMUNERATION PACKAGES  
BANKWEST BANK MANAGERS 2011 (CBA.0001.0394.0750)**

MS ORR: Could I ask you to look at CBA.0517.0085.0010. So that was 2011 we were looking at where you've agreed that it was possible for people to double their base salary with their bonus payment. Now, this document relates to 2012. March 2012. It's a Commercial, Business and Private Bank FY12 KPIs and Incentive Scheme Overview?---Yes, it is.

So we see that shortly after the period we were looking at in the previous document in the 2012 financial year on page 0011, Bankwest had concerns about whether its incentive scheme was a sufficiently strong motivator to stretch performance. Do you see that in the third bullet point down?---That was the feedback from colleagues. So just to clarify, this is not a documented KPI pack. This, from what I can gather, is a pack that was tabled off the back of colleague feedback to the leadership team at the time.

So who are the colleagues?---The bankers.

The bank managers?---The bankers.

So the bank managers are telling the bank that the current scheme is not a motivator to stretch performance. They need a scheme that dangles the carrot and rewards top performers. They wanted more reward?---That would appear to be what it says, yes.

All right. I tender that document, Commissioner.

THE COMMISSIONER: Commercial business and private bank FY12 KPIs and incentive scheme overview, CBA.0517.0085.0010, exhibit 4.96.

**EXHIBIT #4.96 COMMERCIAL BUSINESS AND PRIVATE BANK FY12 KPIs AND INCENTIVE SCHEME OVERVIEW (CBA.0517.0085.0010)**

MS ORR: Now, the bank manager left Bankwest on 28 March 2012. You tell us that in your statement?---Yes, that's right.

And you tell us in your statement that he was ineligible for any remuneration or incentive payment for the 2012 financial year in respect of the loans made to the Ruddys?---Yes, that's right.

Why was that?---If you leave the bank you're not eligible for an STI payment.

Okay. Now, why did the bank manager leave Bankwest?---The bank manager resigned from Bankwest.

What were the circumstances of his resignation?---I have found out in post providing my statement through reviewing the Ruddy file and some of the submissions that there were some issues or beliefs of issues with conduct.

Some issues – what did you say, Ms Taylor?---Conduct issues.

5 Conduct issues. What sort of conduct issues were there?---So from the review I've been able to do, there was an issue – there was an issue with valuations, issue with some discrepancies in some of the transactions that he had undertaken and there was an issue with transfer of a payment.

10 Now, could I ask you just to deal with each of those in turn. What were the issues in relation to this bank manager in connection with valuations?---So there was a concern that he had overstated valuations.

That he had overstated valuations?---Yes.

15 And what was the concern with the discrepancies in transactions?---That was a concern around the accuracy of the inputs into his applications.

20 What does that mean, Ms Taylor?---It means there were some discrepancies between the numbers that were on some of the financial statements and what he had input into the system.

Right. So inconsistencies between the customer information and what he had entered - - -?---Yes.

25 - - - into Bankwest about the customer?---Yes.

Okay. In the customer's favour?---Well, it's relating to financial information. So - - -

30 I see. And what was the issue with transfer of payment?---There was, I believe, a payment issue where he had – the banker had misrepresented – he had represented that he was putting money into a term deposit and it was moved into another customer's account.

35 So he misrepresented that he was putting one customer's money into their term deposit?---Yes.

But instead he moved it into another customer's account?---Yes, that's right.

40 A customer unrelated to the first customer?---As far as I can tell, yes.

So these issues were identified in the lead-up to and following his departure from the bank?---Around about exactly the time of his departure from the bank.

45 And did Bankwest identify that the bank manager had also engaged in inappropriate and improper misselling?---They did reference that in a document, yes.

- And what did that relate to?---So I have only seen some of the documents relating to this issue. I can't ascertain from that sentence specifically what they're referring to.
- 5 And the bank manager had also issued two unconditional letters of credit approval to two customers?---Yes, he had.
- In circumstances where he should not have?---That's right, yes.
- 10 And he had given the inappropriate advice to a customer about payment of the term deposit that you referred to before?---Yes, that's the one - - -
- And that involved an apparent promise of a particular interest rate but then he directed the funds to the other account?---That's right.
- 15 Of the other customer?---Yes.
- And the bank manager was also found to have been manipulating internal Bankwest systems to avoid behavioural triggers in the system?---Yes, that's right.
- 20 And he had misled junior staff to effect particular transactions?---Yes.
- And, as you said, he had inflated valuations to meet credit requirements?---Yes.
- 25 So he left in March 2012. And by early May 2012 there were at least 15 separate customer complaints about the bank manager?---That's right, yes.
- And he was identified as having been involved in three major risk incidents?---I don't recall that from the file. The – if you're referencing the three that were an inter-risk insight - - -
- 30 Yes?--- - - - yes, they relate to what we were talking about earlier, yes.
- So those are the same events?---Yes, the same – yes, the same three.
- 35 And those events had resulted in a loss by that point, by early May 2012, of \$374,000?---A loss to the bank.
- Yes?---Yes.
- 40 And the bank manager's conduct led to a review, it led to two reviews. One review of the operational processes within Bankwest's rural and regional division, which was conducted by representatives of the fraud and investigations team, the legal team, the operational risk team, the business credit team, and rural and regional management?---That's right, yes.
- 45 And it also led to a credit review of the Toowoomba-based loan portfolio?---Yes.

- And that was to be completed by the end of May?---That's right, yes.
- Now, that review would have captured the Ruddys' loan, wouldn't it?---It would, yes.
- 5 And how did Bankwest work its way through the Toowoomba loan portfolio in that review?---So from my understanding, they basically categorised the size of the loans and worked through from the biggest largest loan and work from there.
- 10 And where did the Ruddys' loan fit in that spectrum of biggest to smallest?---It would have been at the smaller end, yes.
- So the fact that the bank manager had been issuing inflated valuations was known to Bankwest by early April 2012?---Yes.
- 15 Now, by mid-April 2012 Bankwest was concerned about any deal that had been done on which the bank manager was the sole valuer?---That's right, yes.
- And Bankwest estimated at that time that there were five valuations on which he had been the sole valuer?---That's right, yes.
- 20 And they would have included the Ruddys. Is that right?---Yes, from my understanding.
- 25 Then on 16 May 2012, the Toowoomba review was raised at a Bankwest executive committee meeting?---Yes.
- And there was a suggestion to the executive committee that there needed to be a discussion about cultural aspects and the role that cultural aspects had played in these incidents?---That's right, yes.
- 30 And there was a suggestion that an independent review on culture could be undertaken?---That's right.
- 35 Did that review of culture occur?---So I haven't yet been able to locate the evidence of that review of culture. However, Bankwest did – did start a major risk culture program late 2013.
- Late two thousand and?---13.
- 40 So we're in May 2012 when the executive committee is talking about these matters?---Yes.
- And saying that a review of culture should occur?---Yes.
- 45 You say there was a review in 2013?---So I do not know that there was not a review at that time. I haven't been able to locate any documentation.

- Yes. And the Commission served a notice to produce on Bankwest - - -?---Yes.  
- - - that has returned no documents about that review?---Yes, two days ago, yes.
- 5 Yes. So are you able to say whether it happened or not?---I'm not able to say whether it happened or not.
- But you found no evidence of it?---That's right.
- 10 Okay. Now, after the bank manager left Bankwest, did Bankwest contact the Ruddys to tell them about that?---Bankwest contacted all of the customers of the banker.
- And what were the customers told about the circumstances of the bank manager's departure from the bank?---I believe they were told that he had resigned and that they  
15 were provided with the details of their new bank manager and there was also a discussion about how they had found the service, and that was the extent of those calls.
- They weren't told that the bank had worked out by this time that he was inflating  
20 valuations, were they?---The customers that had been involved in the major incidents had been told, the three that you referred to. The others were not, no.
- No. The three major incidents weren't the valuations being inflated were they?---No, that's right. No, there was – we believe the five valuations, we've only been able to  
25 locate three.
- So of the five valuations that you identified where the bank manager was the sole valuer, did you tell any of the customers that the bank manager had been found by  
30 Bankwest to have inflated valuations?---No, I can't find any record of that.
- It didn't happen?---I have no record. I have no record of what the actual discussions were.
- 35 Yes. You heard Mr Ruddy's evidence about his recollection of that discussion?---Yes, I did.
- That he asked why the bank manager had ceased to be the bank manager?---Yes, I did.
- 40 And he was told no more than he had departed. He was moving on?---Yes.
- Would it have assisted Mr Ruddy to understand at that time that there was a risk that his valuation had been inflated by the bank manager?---Yes, all of the customers should have been told that there was an issue.  
45
- Yes, and they were not?---No, they were not.

Was that fair to the customers, Ms Taylor?---No.

5 And you accept that that was a breach of clause 2.2 of the Banking Code of Practice and the obligation therein to act fairly and reasonably towards customers?---Yes, I do.

Thank you. Now, did Bankwest take any disciplinary action against the bank manager before he resigned?---Not that I am aware of.

10 Did it take any action at all against the bank manager?---So I can see in the file there was an investigation. I can't see any evidence of any action against the banker.

15 I see. All right. Now, I want to return to the move by Mr and Mrs Ruddy across to Bankwest from Rural Bank and the offer of those three loan facilities to the Ruddys at that time. Those loan facilities were accepted by the Ruddys in October 2011, and they were guaranteed by one of the Ruddys' sons?---Yes.

20 You would have heard earlier that his name is the subject of a non-publication order?---Yes, I have.

Now, Mr and Mrs Ruddy's son executed the guarantees that were contained in the letters of offer on the same day that the letters of offer were issued on 21 September 2011?---Yes.

25 But Mr and Mrs Ruddy didn't execute the letters of offer until 17 October 2011?---That's right.

30 So their son executed his guarantees about a month before either of the letters of offer were executed?---That's right.

Was that standard Bankwest practice?---I'm not aware of it being standard Bankwest practice.

35 Was that an appropriate way of doing this?---I – I don't have any visibility at the time of – of – I do understand that the son did work on rigs and, therefore, may not have been available to – to sign at the relevant time, but as I say, I have no information.

40 Well, as well as the guarantees that he signed that were in the letters of offer, Bankwest also asked him to execute separate guarantees and indemnities, which you've annexed to your statement?---Yes.

Now, he executed those as well?---Yes.

45 And none of those is dated?---That's right.

And neither is the guarantee that you obtained from Mrs Ruddy?---That's right.

So, again, was that standard Bankwest practice, to obtain undated guarantees?---No, that wouldn't be standard practice.

5 Was that acceptable?---It was accepted in this instance, I would - - -

Well, do you accept that?---No, I don't accept that, no.

10 Now, within the letters of offer, we see that Mr and Mrs Ruddy were required to give an undertaking that they would maintain an LVR of less than or equal to 50 per cent?---Yes.

And that requirement applied to each of the facilities?---That's right.

15 And the LVR figure changed a bit over time, we see from the documents?---Yes, it did.

In September 2012 it was increased to 55 per cent?---That's right.

20 And in June 2013, which we will come to, it was removed, the LVR condition?---That's right, yes.

Now, it was a condition precedent of the loans that valuation reports be obtained in respect of the two security properties, Arranfield and Sunrise?---Yes.

25 And in respect of Arranfield, it was a condition precedent that a valuation report be obtained from one of Bankwest's approved panel valuers at the Ruddy expense confirming a minimum current market valuation of \$1.1 million?---Yes.

30 And for Sunrise, it was a condition precedent that a valuation report be obtained from one of Bankwest's approved panel valuers at the Ruddys' expense confirming a \$1.2 million value?---Yes.

So that was a condition precedent of each of the facilities?---Yes.

35 And did Bankwest waive that condition precedent?---Well, internal valuations were done.

40 So did they waive that condition precedent? So the bank manager did the valuations and he wasn't an approved panel valuer, was he?---No, he was an accredited valuer for Bankwest.

45 So he was permitted by your policies to value properties?---He was – he carried out the two day accreditation and he was permitted by policy to, therefore, value properties up to \$5 million.

So in what circumstances were bank managers permitted to conduct valuations on properties that would secure a loan that they themselves were writing?---That would be normal circumstance.

5 That was the normal circumstance?---Yes.

Not to use an independent or external valuer?---So there is the choice to use the independent or external valuer. A lot of customers would prefer not to pay and, therefore, the internal badge particularly for rural valuations is a standard policy.

10

That was the norm?---It wasn't the norm. We've done 24 internal valuations in the last three years, so it wasn't the norm, but anyone who was badged was able to carry out those valuations.

15 Okay, so permitted to do so?---Permitted to do so, yes.

And he had done so and he did so in this instance?---Yes, he did.

20 Thank you. Now, there was no need for that valuation to be jointly signed off by anyone else?---So the valuation goes with the credit application to credit, and the credit officer is required to validate the valuation prior to approving the deal.

25 And under your policy at that time, where the exposure was less than \$2 million, there was no requirement for the internal valuer to complete a site inspection, was there?---No, I don't believe there was.

Why not?---That was the policy. I'm sorry, I'm not sure what the reason would be.

30 As a matter of general policy, the policies that we have from Bankwest for valuations at these times show that there was a maximum safe lending margin of 60 per cent for properties that were valued by internal valuers?---Yes.

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

35 So why was that there?---The safe lending margin applies to all valuations but the safe lending margin is basically the measure of the proportion of a valuation that you would be willing to lend against. So we take historical loss data and apply that to the 100 per cent value. From a historical perspective of these types of deals we generally would lose 40 per cent if that deal ended up in GCS and there were issues  
40 with the transaction, our loss would be 40 per cent. Therefore, the safe lending margin is 60 per cent.

So is the safe lending margin different for an internal valuation or not?---No.

45 No, it's the same?---Yes.

I see. When were the valuations of the Ruddys' properties done?---From recollection they were done in the September.

5 It appears that they were done on 21 and 25 October 2011. If it assists you, you deal with this in paragraphs 115 and 116 of your statement. Is - - -?---Yes.

Is that right, Ms Taylor?---Yes, that is, yes.

10 So they were done after the letters of offer were signed by Mr and Mrs Ruddy on 17 October 2011?---The dates would indicate that, yes. Yes.

After they signed the letters of offer?---Yes.

15 And the valuation of Arranfield was 1.1 million?---Yes.

And of Sunrise was 1.2 million?---Yes. But can I just clarify something?

20 Yes?---The condition precedent means the documents can be signed and the valuation is a condition of funding. So the valuation can actually happen after the documents are signed, the letter of offer is signed.

And is funding held up until - - -?---Yes, until such time as a valuation is provided.

25 - - - a valuation is provided. Okay. Now, can I take you to the Sunrise valuation which you've exhibited as exhibit 75 to your statement, 4000.0096.2172. So this is -- now, we will have to do this without the document on the screen again, I'm afraid, because it seems your exhibits have not been redacted. So I will ask you to look at the valuation - - -?---Yes.

30 - - - report. And when we move to a page where the bank manager's name does not appear, I will have it brought up on the screen, but for now, the first page has the name of the bank manager?---Yes.

35 So this is a copy of the valuation report that was prepared for Sunrise dated 25 October 2011. We see that's the date of inspection and valuation?---Yes, it is.

But if we turn to 2184, which we will not put on the screen, we see it's signed by the bank manager, and next to his signature, date of valuation, 1 August 2012?---Yes.

40 Is that date correct?---No, it can't be correct.

The bank manager had left Bankwest - - -?---Yes.

45 - - - by that time. He left in March 2012?---Yes, that's correct.

So can you offer any explanation for why this date appears on the valuation?---I can't, I'm sorry.

You can't?---No.

There's a similar issue with the valuation report in respect of Arranfield, isn't there?---Yes.

5

It's dated 19 October 2012?---Yes.

Long after the bank manager had left?---Yes.

10 Can you offer any explanation for that?---No, I can't.

All right. Staying with the Sunrise valuation and back to the first page which we won't place on the screen, the size of the properties listed there as being 72 hectares?---Yes, that's right.

15

Now, I would like you to turn to pages 2181 and 2182 which we can put on the screen. We see there that section 8 of the report deals with comparable sales?---Yes.

20 And three comparable properties are listed. One of those is about 263 hectares, one is 360 hectares, and one is 291 hectares?---Yes, that's right.

And we see that the report states at 2182 that those comparators are considered superior to subject as smaller block with superior improvements?---Yes.

25 And then if we turn to 2183 to 2184 – I am hoping it – 2183 we can have on the screen, not 2184. CBA.4000.0096.2183. Thank you. We're in section 10 of the report entitled property valuation and we see a total land value of 1.0836 listed there?---Yes.

30 That figure has been reached by adopting a price per hectare and multiplying that figure by the number of hectares?---That's right, yes.

So all up, the bank manager has refer to there being 896 hectares, 400 hectares of self-mulching land, 200 of lighter red soils and 296 of grazing country?---Yes.

35

So the basis upon which he valued Sunrise is that it was a property comprising 896 hectares?---Yes.

But Sunrise was 72 hectares in size?---That's right, yes.

40

So you accept that the valuation is wrong, Ms Taylor?---So I accept that the inputs to the valuation is wrong. I can't determine from the calculations, given that Arranfield was correct, whether the \$1.2 million value is incorrect. I know that there's a calculation has been done but we did check at the 2011 annual review, two valuers were asked to validate the pricing for Sunrise, and they confirmed that the – even at 45 2012, the \$1.2 million hadn't moved. So that's the only data point that I have for the actual value of the property.

Yes. Well, let's come to what you learnt later, but at this time, this is the valuation that's relied on. In 2011, and a 72 hectare block has been valued on the basis that it's an 896 hectare block?---Yes.

5 And you accept that by getting this valuation wrong, Bankwest engaged in conduct that fell below the community standards and expectations?---Yes.

This valuation was relied on by Mr Ruddy and his wife in the decision that they made to change their course away from the sale of Sunrise to a strategy of holding  
10 Sunrise and borrowing more money?---I - - -

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

And it was wrong?---It was wrong.  
15

And Bankwest did not tell the Ruddys that it was wrong?---No, they did not.

And should they have?---Yes.

20 Valuations are a method of assessing the customer's ability to service a loan, aren't they, Ms Taylor?---No, the valuation does not contribute to servicing.

Not at all?---No. It relates to the security position.

25 And the bank doesn't consider the security position in assessing serviceability?---Serviceability is about the ability to meet repayments, and it is the cash flows and the operating performance of the business that contributes to the servicing exercise.

30 I see. All right. So these valuations which have two dates on them, the October 2011 date and the August and October 2012 date – let's assume that they were conducted in October 2011 while the bank manager was still with Bankwest. By mid-April 2012 Bankwest knew of the issues with the five valuations that the bank manager was the sole valuer for?---Yes.

35 And, as we've discussed, Bankwest did not at that time advise the Ruddys of those issues?---That's right.

40 And the way Bankwest dealt with this internally is shown in a document that I will have brought up on the screen, CBA.4000.0094.0616. So this is an email chain from Paul Nilsson, senior management business credit to Belinda King who by that time had become the Ruddys' bank manager?---Yes. She had always been on the Ruddys' portfolio but she became the manager.

45 Yes. She had been assisting on the Ruddys' portfolio before that time?---Yes, she had.

So this is an email from 2 May 2012 that relates to Mr and Mrs Ruddys' loans?---Yes.

At 616 we see under the heading Valuations and Insurance:

5

*There are errors in relation to internal valuations undertaken in conjunction with original approval with the following amendments to apply pending reassessment or confirmation of valuations in conjunction with 31 August 2012 annual review or an earlier credit event.*

10

?---Yes, that's right.

And we see that in respect of Arranfield, the issue with the date of the valuation was noted?---Yes.

15

And discrepancies in how the insured value was calculated were detected?---Yes, that's right.

But reading through the final paragraph under that Arranfield heading, it appears that Bankwest approved continued reliance on a market value of 1.1 million pending reassessment by 31 August 2012?---Yes, that's right.

20

And in respect of Sunrise, there was an equivalent issue noted with the date of the valuation?---Yes.

25

And, again, there were discrepancies in how the insured value was calculated?---Yes.

And the upshot of those discrepancies, we see at 0617, was that the valuation amount of 1.3 million was to be reduced to 1.16 million pending reassessment by 31 August 2012?---Yes, that's right.

30

And Mr Nilsson goes on to say:

*Group summary reflects market value of 1.2 million, with internal valuation date 20 October 2011. Please amend to 1.16 million with date 25 October 2011.*

35

?---That's right, yes.

So was it common practice to internally amend a valuation in that way?---So they're not amending the valuation, they're actually amending the – the value attributed to the property. So the valuation is a separate document. This is an assessment by credit whereby they have realised that the – the actual buildings and property on the land are not insured to the level that they're valued at and, therefore, it has to be reduced. So the valuation as in the valuation document hasn't been changed.

45

No, I understand that?---The valuation that we recognise for LVR purposes has.

The value in the system has been changed?---Yes. That's right. Yes.

5 So having established that there were errors in the valuations completed by the bank manager for both the properties, the response was to wait a number of months – a number of months until the August annual review, or an earlier credit event, to reassess or confirm the valuations?---Yes, the 31<sup>st</sup> of the 8<sup>th</sup> would be the annual review for the facility.

10 Yes?---And there is – that's a check that I talked about where the banker will make inquiries as to what the value of the property is. This – these errors – this relates to the credit officer's – he has reviewed one particular component of the valuation as opposed to picking up - - -

15 He hasn't worked out the fundamental problem - - -?---The fundamental error. - - - by this point, has he?---That's right. No, he hasn't.

20 He hasn't worked out the difference between the number of hectares used in the calculation?---No, he hasn't.

But he has worked out other errors with the valuations?---Yes.

25 And he has decided that the appropriate thing to do is to leave everything as it is until the August 2012 review, despite the fact that by this time there were the significant broader concerns about the bank manager's conduct?---Yes, that's right.

Was that an appropriate decision?---No.

30 What should have happened at this time, Ms Taylor?---Well, by this time, the valuation error should have been picked up long before this.

I tender that document, Commissioner.

35 THE COMMISSIONER: Emails Nilsson to King CBA.4000.0094.0616, exhibit 4 .97.

**EXHIBIT #4.97 EMAILS NILSSON TO KING (CBA.4000.0094.0616)**

40 MS ORR: And as things transpired Bankwest didn't have either of the properties revalued in August 2012, did they?---So that – when they say reassessment they don't mean that we would be getting the properties revalued. That is part of the annual review which is to make inquiries as – as to the value of the property in  
45 relation to the values that we currently hold, in the event that there is a belief that there has been a significant move in that security value, then we would instruct valuers.

And were those inquiries made in August 2012?---They were. The relationship manager called two external valuers in relation to both Sunrise and Arranfield, and inquired as to whether Sunrise was still worth the 1.2 million. She was told by both that they – the values were likely to be the same. That’s noted in the annual review.

5

And then there was a revaluation in May 2013?---Yes, there was.

Is that right?---Yes.

10 Why was that revaluation done?---So over the course of the Ruddys’ facility there had been quite a number of temporary increases required to – it would be useful to give some context. When the funding took place we had provided the additional \$100,000. It transpired that the rural facility was – had exceeded its limits and, therefore, that amount had to be settled from the 100,000. So the 100,000 was  
15 actually around – just over 70,000. There were significant challenges in the first few months of the account. There were floods in Queensland, and I believe that Mr Ruddy, from my review, had had an accident as well. So for that first – the first probably four or five months there had been significant stress, so temporary excesses had been required. At the annual review, the facility was increased another  
20 \$100,000, but temporary excesses continued to be required and the – there was a – a further extension to 270,000 in 2013 in May. At that stage there was a view that the values of properties had – had dropped. The – the – from the perspective of the facility, the LVR covenant had been moved because the – the LVR covenant had continued to be breached. So we had increased the covenant. There was a belief that  
25 moving to a 60 per cent covenant, the LVR would be fine. However, when the valuation was commissioned, and that’s the reason for the valuation being commissioned at that time.

I want to take you through those events in turn. But throughout that period that  
30 you’ve just described, the Ruddys were struggling. Struggling to make their repayments?---Yes, they were struggling from the perspective of operating the – the – to put it in context, the farming income didn’t cover - - -

Yes?--- - - - the outgoings on their account.

35

Yes. All right. So Bankwest instructed the valuation of the properties on 8 May 2013?---Yes, that’s right.

40 And valuation reports were prepared on 9 May for Sunrise and 15 May for Arranfield?---Yes.

And in your statement you say that the 2013 valuations were obtained as a result of findings from an annual review of the facilities conducted in May 2013?---Yes.

45 Now, you exhibit two documents in connection with that May 2013 annual review, an agri model credit risk review document, and a Bankwest business credit fate document?---Yes.

And are those – are those the documents that record the review that was conducted in May 2013?---So the – there’s the agri model paper which is the annual review. The fate is the credit risk officer’s assessment of that annual review. So an annual review just like an application has to be approved by a risk officer.

5

I see. So those documents are dated 21 May, the annual review document, and 22 May, the credit risk review of that document?---Yes.

10 So why did the valuations predate those documents?---The annual review would be put together over a period of time. So at the – all I can assume from my review is at the point in time where the banker made the call, so similar to what happened in 2012, he would have made inquiries with regards to the value of the property. I believe he got two – two valuers provided him with feedback of comparable sales that had happened the year prior that showed a decline in value that – and that would  
15 have triggered him to then request the valuations while he was completing the annual review.

I see. Now, could we, before I turn to the valuations, just look at the two documents that you’ve described, the one that records the review and the credit risk review of  
20 that document. So if we start with the document which is exhibit 80 to your statement, CBA.0001.0374.0860. So – there we are. This is the agri model credit risk review?---Yes, that’s right.

25 So this is the document that records the annual review?---That’s right, yes.

Is that right? And we see from page 0866 that it was prepared and recommended by, as well as supported by, Gary Douglas. Do you see his name appears in both those places?---Yes, that’s right.

30 And who was Mr Douglas?---He was the relationship manager at that time.

And was it common for a credit risk review to be prepared and recommended by, as well as supported by the same individual?---So that’s not the credit approval.

35 No, I understand that?---Yes.

But what’s the purpose of these distinctions between preparation and recommendation, and support?---From my understanding, if a more junior member of staff, like an assistant relationship manager completed the review - - -

40

I see?--- - - - the – the relationship manager will actually check it.

But Mr Douglas was of a sufficient level - - -?---Yes.

45 - - - of seniority - - -?---Yes, he was.

- - - that he could fulfil both those roles?---He could.

And at 0864 we see that at the time this report was prepared the Ruddys' LVR was 57 per cent. Do you see that towards the bottom of the page?---54 per cent.

5 Do you see in the security summary LVR 57 per cent?---Yes.

And there's a point of comparison in the August 2012 annual review. It was 51 per cent?---Yes, that's right.

10 Now, I want to put to you – you've read this document?---Yes.

That the tenor of this document was that things had become more difficult for the Ruddys since the loans were approved, but that their file was still under control?---Yes.

15 And the document records that Mr Ruddy was seen as a well-established grazier with a satisfactory track record and in-depth knowledge of the industry?---Yes, he was, yes.

20 He provided financial data when requested?---Yes.

The relative high number of irregular days with amounts was considered nominal?---Yes.

25 Borrower is proactive in alerting bank to any overdrawings ahead of time?---Yes.

There's also references in this document to the borrower having two dozers and a diversified income stream?---Yes.

30 Continuing:

*He is actively seeking to take on additional dozer work given current dry conditions and poor cattle prices.*

35 ?---Yes.

So the plan as at the date of this document was that Bankwest would amend the LVR to 60 per cent and that's described in the document as being:

40 *To provide the Ruddys with minor headroom should the revaluations deteriorate slightly.*

45 ?---Yes, that's right. There was also a comment in relation to the borrowers had made a strategic decision not to sell cattle given the market and therefore – there would obviously therefore be a requirement for some additional headroom for the Ruddys.

And the document records that in the event that the proposed covenant was breached following the revaluations, the matter would be reported to business credit for further strategy and sanctioning?---Yes.

5 Okay. And the Ruddys had to – they had agreed to formulate a strategy following receipt of the revised valuations?---That’s what – yes, the paper says.

And then the second document you annexed dealing with the review at this time is the credit fate document behind tab 81, CBA.4000.0094.1072?---Yes.

10

So what’s a credit fate document, Ms Taylor?---So this is a document when the annual review under a credit paper are submitted to risk. The risk officer will review that paper and make comments on – well, (a) approve or decline and make comments for the relationship manager about the credit department’s view on the application.

15

So was this document also prepared by Mr Douglas?---Well, no, the comments would not be Mr Douglas. They relate to the risk officer’s comments.

20 Yes, I see. And do we see the risk officer’s name in the approved by box. Is that right?---Yes, Michael Craig.

25 Yes. Now, the tenor of this document was also that things had been difficult for the Ruddys but their file was under control?---I think the tenor of this document was a little more along the lines that they were at the maximum from the perspective of their – their ability to service, as well as the security position. So they were both, from my read, concerns about the cash flow position and concerns about security.

And the final comment is:

30 *Comfortable with position as it stands, but let’s see what revaluations produce and if revised LVR is breached, then farm sale strategy may take on greater emphasis.*

35 ?---Yes, which is the strategy referred to in the annual review.

Yes. So these are the documents from 21 and 22 May 2013 in relation to the annual review. And shortly after that on 24 May 2013, Bankwest issued two letters of variation to the Ruddys in respect of their facilities?---Yes, that’s right.

40 Now, those letters of variation weren’t originally exhibited to your statement?---That’s right.

But you reswore your statement on Sunday?---Yes, I did.

45 And in this revised version of your statement you exhibited those documents?---Yes, I do.

Following a notice from the Commission late last week to produce those documents?---I wasn't aware there was a notice but I believe we had found all of the relevant documents over the period of putting the notice together – my statement together. We found additional documents that we then attached.

5

If Mr Scerri would like me to I'm able to tender that notice if any issue is taken with that, but it doesn't appear that there is. Now, having annexed those two documents as exhibits to your statement on Sunday, we can see now from exhibit 28 – I'm sorry, exhibit 83 – 28A, I'm sorry, which is CBA.0517.0167.4000. The letter was issued on 10 24 May right after the two documents we've just looked at and we see here the offer to raise the LVR covenant to 60 per cent?---Yes.

Consistent with those internal documents. And by this letter, if we turn over to 4001 – I need to take you to other pages to show you the overdraft facility increase. I will 15 take you to your 28B at CBA.0517.0167.4008. We see there that the overdraft facility was increased from \$260,000 to \$270,000?---Yes, that's right.

So the LVR covenant was increased to 60 per cent, and the overdraft was increased from 260 to 270?---Yes, that's right. It had been 200.

20

Yes?---There was a variation to 260 and then it was 270, yes.

That's right. It would have been 200 by the end of May had it not been for this variation?---Yes, that's right.

25

And the offer contained in these two letters of variation was specified to expire on 24 June 2013?---Yes, that's right.

And were the letters of variation signed by the Ruddys?---I have no record of signed 30 copies of the – the – of this variation.

Have you seen documents that suggest that they were signed, Ms Taylor?---I think – yes, I have seen a document where Mr Ruddy said he signed and returned them.

35

Yes, thank you?---We haven't been able to locate them.

Now, can I take you then to the valuations, which had been prepared prior to this time but don't seem to have informed these decisions. Is that right?---Informed which decisions, sorry?

40

Do you recall – the decision to change the LVR covenant to 60 per cent and offer the overdraft facility increase?---So the – the decision to change the LVR happened in the annual review.

45

That's right?---And was documented as a part of that in anticipation of - - -

The valuations?---The valuations.

But the valuations had been received then or not? It was in anticipation of the valuations. I thought that was how you had described it?---Yes. It was in anticipation. Yes, that's right.

5 And then the valuations were received?---Yes.

After those decisions had been made?---That's right.

10 And can I take you to the Arranfield valuation, which is your exhibit 78, CBA.4000.0094.1085. And we see there that Arranfield was revalued at \$900,000 down from the \$1.1 million valuation of the bank manager in 2011?---Yes, that's right.

15 And the Sunrise valuation valued Sunrise at \$750,000 down from the 1.2 million valuation done by the bank manager in 2011?---Yes, that's right.

So for Sunrise, more than a third of the value of the property had been wiped off?---Yes.

20 So the result of the revaluations was that the Ruddys' LVR was 77.6 per cent?---That's right, yes.

And these two valuations cost a total of \$6600?---That's right, yes.

25 Now, the charging of the valuations to Mr and Mrs Ruddys' overdraft account posed somewhat of a quandary for Bankwest because the Ruddys didn't have enough money to pay for the valuations, did they?---There had been a temporary increase effected to the account because the account was already overdrawn prior to the valuations being charged.

30

Yes?---And so that was already in place at the time the valuations were charged.

35 Well, I want to take you to the strategy that Bankwest devised to deal with the situation where the Ruddys were already overdrawn at the time you wanted to charge the valuations to their account. Could I show you CBA.4000.0096.1798. Now, we see there an email chain – and I will ask you to look at the email at page 1799. This is an email from Gary Douglas to Mitchell Durack on 13 June 2013?---Yes.

Continuing:

40

*Further to our discussions of yesterday regarding this client I have discussed the situation at length with Nathan this morning. From Nathan's experience in GCS –*

45 Group credit structuring –

having managed several similar cases, he believes the below would be an acceptable outcome. (1) advise the borrower that the letter of variation recently issued and signed dated 24 May 2013 is null and void as the outcome of the valuations has breached the 60 per cent LVR covenant; (2) forbear the LVR breach given that a new letter of variation is issued replacing the above to include or document the following strategy triggers, borrower to be provided with a \$270,000 AgriOne limit (we need to pay the \$6000 in valuations now due) undertakings to include borrower to provide bank with evidence of security property sales listing by 30 September 2013, a \$50,000 debt reduction by 31 December 2013, borrower to evidence to bank that they have executed a sale contract on security properties with it being unconditional by 30 April 2014, with a settlement date by 30 June 2014.

So that the plan the bank came up with was to get rid of the letters of variation that had already been sent to and signed by the Ruddys by declaring them null and void, forbear the resultant LVR breach from the variations and issue a new letter of variation which amongst other things would increase the overdraft limit sufficiently so that the valuation fees could be charged?---I don't agree with that.

You don't agree with that?---I don't agree with that. In my review of the file, the – the increase to the overdraft, the 20,000 I was talking about, was a temporary increase because there were – there were some cash flow constraints. From the perspective of the LOV, issuing the LOV with an LVR that had already been breached would mean that the customer was already in breach of contract. So whilst the way it is written it may read like that, from my reading of the file the reason that the documents were reissued was so that the LVR covenant was removed so there would be no LVR breach. And the 270 AgriOne limit was not set up to solve for the valuations. That was the limit that had been agreed to be put in place and – yes, I – I haven't seen anything that would indicate that the bank was trying to pay its valuation fees by doing that.

Well, what about the line in the email that we see there, Ms Taylor:

*Borrower to be provided with \$270,000 AgriOne limit (we need to pay 6000 in valuations now due).*

?---In reading the file, there – there was always an increase to the AgriOne limit. That was always the plan to support the Ruddys.

You don't know what was being referred to here, then?---Well, I can see that he's saying "we need to pay six in valuations now due" but from all of the documents that I've reviewed the intent was to increase the AgriOne limit to support the Ruddys and to remove the LVR covenant so that they were not in breach.

I want to put to you that that was all also with the purpose of permitting them to have enough funds that would allow you to recoup the costs of the valuations?---I didn't see that as the intent.

THE COMMISSIONER: Well, let me understand what you mean by to support the Ruddys. What do you mean in this context when you say, as you did, that the increase in the OD was to support the Ruddys?---So from the perspective of the Ruddys' account they had continued to require temporary excesses that were not able to be cleared because cattle sales were problematic. So by giving them an actual approved facility limit they had the certainty of knowing that it was there, versus having to constantly phone the bank. As you will see there's a note there around having to phone to get extensions, because what was happening was they would phone for an extension as cheques were being presented.

That is the extension was the increase in limit was to help them pay debts that they sought to pay?---Yes, cheques would be presented.

One of the debts they would have to pay was the 6000-odd for the valuation?---Yes.

The increase in the limit would permit payment of the 6000 in valuation?---Yes, it would.

What's the hesitation then about saying that the increase in limit was, in part, to allow for payment of the valuation?---I actually think the bank's intent throughout this entire case was to support the Ruddys. I can see that that was – that – in reading that, that it looks as though the increase was for the valuations to be paid.

Yes.

MS ORR: The charges for the 2013 valuations were charged to Mr and Mrs Ruddys' overdraft account on 14 and 17 June 2013?---Yes, that's right.

And you tell us in your statement that you've been unable to find any record of Mr or Mrs Ruddy being informed that the valuation fees were to be debited from their accounts?---I actually did find since that time a reference Mr Ruddy made when he presented at the primary production hearing where he said that the banker had phoned him and had basically explained that valuations would be done and they would be charged to his account.

But have you found any record of Mr or Mrs Ruddy being informed before the money was taken out that it was about to be taken out?---I haven't, no.

No. Because I think Mr Ruddy's evidence was that there were discussions between him and the bank about the fact that the bank wanted to do these valuations. And he said he didn't want the bank to do the valuations. Did you hear that evidence?---Yes, I did.

Now, I will tender that email chain, Commissioner.

THE COMMISSIONER: Emails between Durack and Douglas, 13 June 2013, CBA.4000.0096.1798 becomes exhibit 4.98.

**EXHIBIT #4.98 EMAILS BETWEEN DURACK AND DOUGLAS DATED  
13/06/2013 (CBA.4000.0096.1798)**

5 MS ORR: You accept in your statement that there was a failure to inform the Ruddys that the valuation fees were to be debited from their accounts and that this was conduct that fell below community standards and expectations?---Yes.

10 And you heard Mr Ruddy's evidence that after the valuations were charged to their overdraft account, they were left short?---Yes.

15 They lost about 80 head of cattle because they couldn't afford to feed them at this time?---Yes. I did also mention that there was a \$20,000 extension to the overdraft prior to this facility being funded so that there were funds available in the account.

Now, Mr Ruddy's evidence is that he was told by Bankwest by phone in about June 2013 after the valuations that he was in breach of his LVR?---I haven't found evidence of a call.

20 You say in your evidence you haven't located any record of that call?---Yes. No, I don't.

And you say that customers are ordinarily notified in writing of any - - -?---Yes.

25 - - - covenant breach by Bankwest. But I want to put to you that that email chain that I took you to, which is still on the screen, makes clear that Gary Douglas had been authorised to communicate the thrust of this message to Mr Ruddy. That message being that the 2013 letters of variation were null and void due to the breach, that Bankwest would forbear the breach and offer a new letter of variation?---Yes.

30 And if we look at page 1798 in that email chain, from an email that Mr Douglas sent the following day, we can see that Mr Douglas did telephone Mr Ruddy. Do you see that?---Yes.

35 Continuing:

*Hi, Mitch, I have had a discussion with Mr Ruddy this afternoon regarding the bank's position.*

40 ?---Yes.

Now, the letters of variation that were issued by Bankwest in June 2013 materially altered the Ruddys' obligations to Bankwest, didn't they?---Yes, they did.

45 The Ruddys were required to list Sunrise for sale?---Yes.

- And they were required to make a debt reduction of \$50,000 by the end of 2013?---Yes.
- 5 Do you consider that it was fair and reasonable for Bankwest to rely on a revision to its own erroneous valuation to trigger a non-monetary default?---It was not fair.
- 10 Thank you. You accept that it was a breach of the requirement in the Code of Banking Practice to act fair and reasonably towards your customers in a consistent and ethical manner?---Yes.
- 15 Now, in October 2014 Mr and Mrs Ruddy referred a dispute with Bankwest to the Financial Ombudsman Service?---Yes, he did.
- 15 And the Ruddys disputed the manner in which Bankwest had conducted the valuations and their reliance on the valuations in generating a default?---Yes.
- 20 And on at least two occasions after the Ruddys lodged this dispute, Bankwest requested that the dispute be ruled outside FOSs terms of reference?---Yes.
- 20 On the basis that farm debt mediation was a more appropriate place to deal with the dispute?---That's right.
- 25 Was this because Bankwest had concerns about the scrutiny that FOS would apply to the matter?---I can't determine that from the file. It would appear at that time that was standard practice who it came to rural customers, that the belief was that farm debt mediation was better for resolution.
- 30 And why was that?---I haven't been able to find the actual reason but that was just the policy that they would actually write to FOS and request.
- 35 Even where a customer had initiated a dispute in FOS?---Yes.
- 40 Could I show you CBA.4000.0097.0952. I think your counsel would like to provide you with a hardcopy of the document as well which might assist because you can start looking at what it is, Ms Taylor, while it is coming up on the system. We have it up on the screen now. Could you tell us what this document is, Ms Taylor?---This is a policy document for the GCS team. So how they – basically when a FOS complaint is lodged, what the GCS team do with any customer that has lodged a complaint.
- 45 So it's a policy document for the group credit structuring - - -?---Yes.
- - - team dated 2 July 2013?---Yes.
- 45 So this is a year prior to the Ruddys lodging their dispute with FOS?---Yes.

And we see in this document that Bankwest was at this time expressing concerns about how FOS might perceive its conduct after a dispute was lodged?---Where are you referring to?

5 I will take you to paragraph 7:

10 *GCS managers should be mindful at all times of how they present their communication with customer. FOS does not look kindly on customer being informed by the bank that it no longer wants to retain their business. The strategy is exit only. An alternative communication could talk in terms that resonate with the customer such as, "We are of the view that the best outcome for you is to realise the assets that support the loans to the bank with a view to repaying those loans."*

15 ?---That – that, when I read it, relates to communication with customers, not a view that FOS may rule adversely to the bank.

I'm talking more about FOSs perceptions of the bank's conduct by reference to:

20 *FOS does not look kindly on.*

?---It – in my read, it is FOS does not look kindly on – and it relates to the communication and the words that the GCS team use when communicating to customers when they're in GCS.

25 That's right. So this is guidance for the people in the team about how to communicate with customers once a FOS dispute is on foot because Bankwest doesn't want FOS to not look kindly on those communications?---I would like to think that people considered communication with customers other than in relation to  
30 FOS. My read of it is not that, but I read it as, you know, that communication with customers should be done in a thoughtful way, not using language that banks use in these instances.

35 But this is all about how the team should behave in the management of FOS complaints. We see that from the heading?---Yes.

Management of FOS complaints:

40 *Once we have been advised that a customer has lodged a dispute with the Financial Ombudsman –*

Here is a list of the things we should do?---And one of those is be mindful of how a GCS person presents their communications with customers.

45 So you're resisting my characterisation of this as being a document that shows concerns by Bankwest about how FOS might perceive its conduct after disputes with FOS are lodged?---It's not how I read it.

I tender the document, Commissioner.

THE COMMISSIONER: Can I describe it as a policy GCS team?---It is a policy, yes.

5

It is a policy document. Policy GCS team, 2 July '13, management of FOS complaints, CBA.4000.0097.0952, exhibit 4.99.

10 **EXHIBIT #4.99 POLICY GCS TEAM, MANAGEMENT OF FOS COMPLAINTS, DATED 02/07/2013 (CBA.4000.0097.0952)**

MS ORR: Now, before the matter got to the recommendation stage in FOS, Bankwest provided a written response to FOS dealing with some of the dispute details that had been provided by the Ruddys?---Yes.

15

And that document is FOS.0030.0001.1858. Now, you've read this letter that Bankwest provided to FOS in response to the Ruddys' complaint?---Yes.

20

There is no mention of the 2011 valuations in this letter, is there?---No, there's not.

So by this time, the bank knew that the 2011 valuations had been done in error by a bank manager who was inflating valuations and engaging in other forms of misconduct?---Yes.

25

But the bank chose not to acknowledge any of that to FOS?---I would – there are not many people left from Bankwest from 2013, and I would assume what has happened here is a customer relations person submitting this information would – wouldn't have known that. That's all I can deduce because they've also said an independent valuer not Bankwest did the valuation.

30

That's an assumption you make, is it, Ms Taylor?---That's the only explanation that I can give.

35

Well, another explanation is that a decision was made not to tell FOS those things?---No, I – I do not believe that that's the case.

Well, how do you know that, Ms Taylor?---Well, there – there would be no benefit to the bank in doing that. I genuinely don't believe that had that been realised that it wouldn't be – it wouldn't be noted.

40

So in response to the issue identified by the Ruddys of incorrect valuation of the property, all that the bank told – all that the bank chose to tell FOS was that the properties were valued by an independent valuer and not by Bankwest?---Yes.

45

Was that a full and frank way to deal with FOS in response to the Ruddys' dispute?---No, assuming that the person dealing with the dispute was aware of the issues with Mr [REDACTED] – sorry, the banker, given that he had resigned and left.

5

Well, we see from the following page, 1859, that the person who wrote this letter was well aware that the banker had left the bank. At paragraph 6,:

*The banker is no longer with the bank and has not been for some time.*

10

?---No, so they would know that he – that the banker is no longer with the bank but not the circumstances under which he left necessarily.

Wouldn't they look into the circumstances surrounding his departure. You say you've only had a small number of FOS matters that we saw your table right at the start of your evidence. A very small number of agricultural customers have taken their matters to FOS. And here is one where the banker has left the bank, the banker who performed the valuation that led to all of these problems, and the person who made the response to FOS didn't look into the circumstances of his departure?---So they would have looked at the timing and the state, realise that we had exited Queensland, and the eastern states and would not have – and would have assumed that – I assume would have assumed that that's part of that, and this person replying with this letter would have dealt with the relationship manager in GCS who would have provided the majority of the information, I would assume.

25

Well, is that good enough, Ms Taylor?---The – well, the valuation should have actually been – it should have been realised that the valuation was incorrect earlier but no, they could have made inquiries, yes.

30 Bankwest also told FOS in this letter on the first page, back to 1858, down the bottom of the page, paragraph 1:

*The dispute is as a result of monetary default and not LVR default.*

35 ?---Yes.

Continuing:

*The bank acknowledges that there had been an LVR covenant breach. However, the covenant was subsequently removed from the letters of variation.*

40

?---Yes.

45 Now, was that – was that the right way to describe what had happened?---So there were numerous monetary defaults on the account. The account was transferred to GCS on the basis of – well, it wasn't the LVR covenant breach. It was on the basis

of the fact that the temporary excess was not due to be cleared by the due date, an additional \$25,000 had been provided – I believe it was in November.

Now, I tender this document, Commissioner.

5

THE COMMISSIONER: Bankwest response to FOS re Ruddy, 13 April '15, FOS.0030.0001.1858, exhibit 4.100.

10 **EXHIBIT #4.100 BANKWEST RESPONSE TO FOS RE RUDDY DATED 13/04/2015 (FOS.0030.0001.1858)**

15 MS ORR: Now, having read the documents showing the way that Bankwest interacted with FOS in the course of this dispute - - -

20 THE COMMISSIONER: Can I just interrupt you there and just whilst we have this document on the screen, Ms Taylor, let it be assumed that the author of the letter (1) did not know of the history concerning the particular banker; and (2) did not find record of that history on the file. Does that invite attention to whether when a banker leaves the organisation in the circumstances in which this banker left, there should be some process where the files that he or she has dealt with are flagged and connected with the questions of difficulty that surrounded departure?---Yes, well, there should be – we now note those instances on the HR system so that we do know, you know, 25 the reason why someone left. But the potential to flag a customer as being a file that should be of note would be a useful thing.

It is not so much flagging on the HR, it is flagging - - -?---No, no.

30 - - - on the customer files. This is a customer of banker X who left the organisation in circumstances that directed attention to - - -?---Yes. Yes.

- - - valuation practices?---Yes, I agree.

35 Now, is that a step that has been taken? Is it a step that can be taken?---Certainly a step that could be taken, yes.

But has not?---Has not, no.

40 Yes.

MS ORR: Ms Taylor, you've looked at the documents that show the way Bankwest engaged with FOS through the course of this dispute?---Yes.

45 And do you accept that Bankwest delayed in providing information that was sought by FOS in its processes of dealing with that dispute?---I think there were – there was time obviously between communications. I can't ascertain from my review of the

file whether there was – you know, it can take time for people to get information. So I can't make an ascertainment as to – or ascertain whether or not there was a delay strategy.

5 Well, can you see resistance demonstrated by Bankwest in response to requests for information from FOS, which FOS expressed exasperation with?---Yes, I did see that.

Thank you. Now, FOS issued its recommendation on 21 August 2015?---Yes.

10

And you've exhibited that recommendation to your statement as exhibit 57, CBA.4000.0093.0042. Now, the recommendation was on the screen in Mr Ruddy's evidence - - -?---Yes.

15 - - - before. The key pages are 0045 and 46 within the recommendation. If we could have both of those on the screen. We can see that the FOS case manager made two material findings against Bankwest?---Yes.

20 And the first was that the bank manager had overvalued Sunrise in October 2011?---Yes.

But this didn't render the lending inappropriate?---Yes.

25 And in respect of the cause of the valuation, FOS found that it was more likely than not that the bank manager used the wrong land size to complete the valuation?---Yes.

30 And the second material finding was that given the flawed September 2011 valuation, the bank should not have relied on the 2013 valuation to require the Ruddys to make a principal reduction to reduce debt and to sell the properties?---Yes.

And at 0052, in respect of the LVR covenant issue, we see under the heading The LVR Covenant was Breached at the Outset?---Yes.

35 The case manager found that:

40 *Having regard to the flawed internal valuation in 2011, the LVR covenant was breached at the outset. Although the parties agreed in October 2011 that the applicants should maintain an LVR of 50 per cent or less, and their contract included a condition precedent (unless waived) that Sunrise should be valued at at least 1.2 million, these terms were breached from the commencement of the lending. For the reasons set out above, the value of Sunrise in October 2011 is likely to have been in the order of 750,000 resulting in an overall LVR at that time of 60.54 per cent, which breached the revealing 50 per cent LVR term.*

45

?---Yes. But on the 750,000, FOS valued the property at 750,000 in both 2011 and 2013. If you look at Sunrise – sorry, at Arranfield, the property values changed over time. So I do believe that it's – it's an incorrect assumption that the value of Sunrise was the same at 2011 as it was at 2013. It would have been a higher value.

5

Well, that was the finding of FOS?---Yes.

And FOS also found, later down on this page, that given Bankwest's reliance on its flawed 2011 valuation, it was not appropriate for it to rely on the breached LVR when calling in the debt on agreed terms in the June 2013 valuation?---Yes.

10

You see that FOS says that:

*Bankwest said it relied at all times on the applicants' monetary default and whether there is an LVR issue is irrelevant. This is incorrect. In its initial response to the applicants dated 4 November 2014, the bank said it required valuations in 2013 as part of its annual review of the facilities. These valuations resulted in an LVR breach and subsequently the customers signed letters of variation on 26 June 2013. These letters of variation required the listing of the security properties for sale, principal reductions, and unconditional sales contracts by 31 March 2014.*

15

20

?---Yes.

So FOS rejected the bank's characterisation of having relied on a monetary default and found that the LVR breach was the basis for the issue of the 2013 – June 2013 letters of variation?---Yes.

25

Now, the Ruddys didn't accept this recommendation?---No, they did not.

30

As you heard. The matter proceeded to determination. And you've annexed the determination to your statement as well behind exhibit 60, CBA.4000.0096.0422. Now, for the most part – we will see when this comes up on the screen, but we will see if you're able to answer this before it does, Ms Taylor. For the most part, the ombudsman endorsed the case manager's findings?---Yes.

35

Including the findings about the flawed valuation in 2011 and about Bankwest's reliance on the non-monetary default in 2013?---Yes.

And FOS also made two further ancillary findings that were in the Ruddys' favour?---Yes.

40

And they related to interest charges?---Yes.

And they resulted, if accepted, in an obligation on the part of Bankwest to reduce the overdraft account balance and credit \$2000 to the overdraft account?---Yes.

45

And the Ruddys didn't accept the determination?---That's right.

Which meant that that obligation was not binding on the bank?---That's right.

5 But did the bank, nonetheless, proceed to reduce the overdraft account and credit that amount to the Ruddys' account?---No, we moved straight to farm debt mediation, from my understanding.

So - - -?---And we made many concessions there.

10 I'm sorry?---And we made many concessions there.

There?---Yes.

15 All right. So at this time you chose not to comply with the direction from FOS, which was not a mandatory direction?---Yes.

And as you've told us in your statement, and as we discussed earlier, the Ruddys aren't the only agricultural Bankwest clients to have had a recommendation or determination made wholly or partially in their favour at FOS?---Yes.

20 Now, could I ask you to look at CBA.4000.0107.3290. Now, this is another FOS determination. Now – unless there's a hardcopy for you here, which is coming, you won't be able to see the applicant's name, but this is a document that was provided to you in advance of you giving evidence. Have you read this document, Ms Taylor?---I just need to check which name is on it. I assume I have. Yes, I have.

So you're familiar with this determination?---Yes.

30 Which was a determination in favour of a Bankwest customer?---Yes.

And the applicants in this dispute had a number of bases to their claim, including that Bankwest had misled them in respect of a loan contract because they thought that the term was greater than a particular period?---Yes.

35 And FOS rejected that complaint?---Yes.

But they also raised an issue about the appropriateness of Bankwest relying on the difference between a 2010 valuation and a 2013 revaluation of a property to force an LVR breach?---Yes.

40 Now, on the face of the determination, there's nothing to suggest that issue is taken with the correctness of the 2010 valuation, but for completeness, the 2010 valuation was in fact completed by the same bank manager, wasn't it?---Yes.

45 But the FOS determination was focused on the appropriateness of the 2013 method of valuation in this case?---Yes.

And FOS found that because of the defects in the valuation method in 2013, Bankwest wasn't entitled to rely on the 2013 valuation for any purpose, including for a breach of the LVR ratio?---Yes.

5 So the circumstances of these applicants had some similarities to the Ruddys?---Yes.

And so does this FOS determination indicate to you that Bankwest had broader issues with relying on flawed valuations to trigger breaches of LVR covenants?---So in relation to this – this case, the valuation wasn't flawed, it was the way that the valuation was conducted was the dispute. So there are a number of ways you can value land, and the way that the land was valued in this instance was different to the way that it was valued in 2011, and that created the differential.

10  
15 So do I take from that that this doesn't suggest to you that there are broader issues in Bankwest about relying on incorrect or otherwise flawed valuations to trigger breaches of LVR covenants?---I – I don't – no, I don't believe that's the case.

20 And is this one of the three FOS matters that you identified in your statement as having got to the recommendation or determination stage wholly or partly in favour of the customer over the last 10 years?---I believe it is, yes.

25 Which one is it, Ms Taylor? You describe each of them in paragraph 32 of your statement. Paragraph 32 is CBA.9000.0070.0011?---Yes, I – it doesn't look like it is one of the three.

It doesn't, does it?---No.

30 So you in your statement told the Commission that only three FOS complaints made by agricultural customers reached recommendation or determination wholly or partly in favour of the customer over the last 10 years?---Yes, and we did a manual review of all files to get to that number.

So you missed this one?---It would appear we did, yes.

35 And this is the one that looks a lot like the Ruddys' case?---It – it's actually not a lot like the Ruddys' case. You referenced an inaccurate valuation. It's not an inaccurate valuation, it's a different way of valuing.

40 Well, it involved the same bank manager?---Yes.

And it involved use of a 2013 valuation to breach – to force an LVR breach based on the difference between the 2013 valuation and a 2010 valuation?---Yes, that's correct.

45 But you didn't include reference to it in your statement?---It was not found when we did the manual review of all of the files.

I tender a copy of that FOS determination, Commissioner.

THE COMMISSIONER: How do I describe it, Ms Orr? FOS determination case 38, I think was on the front page.

5

MS ORR: Well, we could describe it as a determination on 25 November 2014.

THE COMMISSIONER: Much better.

10 MS ORR: Thank you.

THE COMMISSIONER: FOS determination, 25 November 2014, CBA.4000.0107.3290, 4.101.

15

**EXHIBIT #4.101 FOS DETERMINATION DATED 25/11/2014  
(CBA.4000.0107.3290)**

20 MS ORR: Now, Commissioner, I have finished that topic. I still have at least two further topics to go to. And I see the time. I don't think I can finish with this witness today.

25 THE COMMISSIONER: We will need, I'm afraid then, to bring you back, Ms Taylor, but can we bring at 9.30 tomorrow.

MS ORR: Yes, Commissioner.

30 THE COMMISSIONER: We will begin at 9.30 tomorrow.

MR SCERRI: Commissioner, can I respectfully ask how much extra time we need? The difficulty is that Ms Taylor comes from Perth. She has a young family. She has been involved in this for weeks now. And if it's possible to finish tonight, we would very much appreciate it. We have been told several times that it's expected that she would finish tonight.

35 THE COMMISSIONER: I'm surprised by that, Mr Scerri, but there we are. What do you say, Ms Orr?

40 MS ORR: I think I've got up to an hour, Commissioner.

THE COMMISSIONER: Well, I'm not sitting that long.

MR SCERRI: No, I understand.

45

THE COMMISSIONER: Mr Scerri. It's not fair to the witness.

MR SCERRI: It's a surprise but - - -

THE COMMISSIONER: It's not fair to the witness.

5 MR SCERRI: No. I was really trying to clarify whether it was 10 minutes or an hour or two hours.

THE COMMISSIONER: Yes.

10 MR SCERRI: Some of the estimates have been pretty inaccurate, I should say, with respect, sir.

THE COMMISSIONER: Mr Scerri, do you want to think about that statement again?

15

MR SCERRI: Yes. It is the fact, sir, that witnesses have cooperated to extraordinary extents, and the estimates of when they will be required and where has changed a lot.

20 THE COMMISSIONER: I have noted what you've said, Mr Scerri.

MR SCERRI: Thank you, sir.

25 THE COMMISSIONER: It may surprise you then to know that very careful attention is given to trying as best we can to minimise disruption. Now, do we always succeed? No, we don't. I accept that. I know we don't always succeed. But we do try.

MR SCERRI: Yes, sir.

30

THE COMMISSIONER: 9.30 tomorrow.

35 <THE WITNESS WITHDREW

[4.15 pm]

**MATTER ADJOURNED at 4.15 pm UNTIL FRIDAY, 29 JUNE 2018**

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