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REVIEW OF EDR SCHEMES

SUBMISSION OF MICHELLE MATHESON

4TH OCTOBER 2016

My Matter: FOS, CIO and

My Mother's Matter: FOS and

ATTENTION: THE PANEL

Please accept my submission to the EDR review below. The terms of reference have not been addressed individually, however, are addressed throughout this submission as a whole. As a consumer, I have had several disputes with FOS and CIO during the last 4 years due to mortgage fraud within my own case and that of my elderly Mother's case. I am still currently in the CIO and in my home, my elderly Mother lost her home in 2011 and FOS will not investigate the mortgage fraud within her case. FOS were complicitly involved in assisting _____ in the sale of my elderly Mother's property in 2011.

To date, all disputes raised with the FOS and CIO in relation to both cases have been critically flawed, beyond incompetently managed, have proven a bias and brazen enabling of the financial service providers illegal conduct in the two cases and have evidenced that the errors of law applied to these disputes have caused serious consumer detriment.

Regardless of the evidence provided to the FOS and the CIO of illegal and systemic practises by these lenders, the selective application of the obscure and unlawful 'Rules'/Terms of Reference of these EDR schemes has allowed the financial services providers to decimate my family and continue their fraudulent and bullying conduct to other consumers affected by mortgage fraud and systemic illegal practises.

A summary of pertinent issues and their outcomes for each EDR dispute :-

FOS Dispute re: Lender's refusal to give complete copy of consumer file

The FOS ignored the documents provided to them, clearly outlining that the lender was concealing many parts of my consumer file. The FOS stated that these 'missing' documents contained 'commercially sensitive material' and that I was not allowed copies. I asked for them to be sanitised so that at the very least I can have all of my documents held by this lender containing my personal particulars, pursuant to Part 6 and Part 12.5 of the Australian Privacy Principles. How does a consumer manage their case when the lender refuses to give documents and abuses the Privacy Principles and the EDR scheme enables them to do so. This leaves the consumer in the only available position of taking the matter to court to obtain their own file held by the lender.

The FOS and the CIO refuse to hand over consumer documents. The Privacy Officer replied to my email request for personal documents. This reply in addition to their refusal to provide all of the documents, literally stated, "In addition, it would provide insight into how FOS approaches its core business of dispute resolution and this is where the information becomes commercially sensitive – FOS has its competitors, just like any other business."

FOS Dispute re: Maladministration in Lending [My case]

After the lodgement of the FOS dispute I received a phonecall 2 years later from a FOS employee whom stated, "I am xxxx, I'm the new case manager, if you won't sell your house I can't help you."

This same employee, then conducted a phone call prior to the determination being handed down and she continued to attempt to manipulate and over talk me, create a hostile and intimidating environment and was so unprofessional that her crude and aggressive manner was reported to the FOS whom apologised on her behalf but "found that she didn't do those things". This employee refused to sign off on the transcript of this phonecall as an indication that this was a true and accurate reflection of our conversation.

The FOS took 2 years to issue the Determination, the lender refused to freeze the transaction while FOS deliberated and the debt continued to accrue. I had been deceptively trapped into a small business loan, as a first home buyer, without my knowledge. Subprime mortgage fraud. FOS found that the 'Determination was in my favour' however provided this outcome; 50% onus on the bank for their wrong doing but 50% onus on myself for failing to protect myself from their wrong doing. Our home would have to be sold and we would be homeless. I asked for a legal contract, that the transaction be reopened and recalculated based on the principal loaned minus payments made and subsequent debt minused as a direct result of their actions. This reasonable remedy to ensure that any monies owing would be paid and my family would not be homeless was ignored by FOS. For obvious reasons, I rejected the 'Determination'.

The FOS also cited that the broker was the agent of myself, the borrower. This is not reflective of the NSW judicial precedence nor the actual relationship of agency between the lender and the broker. The lender misled the FOS about this relationship and the FOS failed to investigate this critical issue at all.

In 2013, Phillip Field, while addressing the inquiry into ASIC stated on Hansard, "Unless it's an investment property the selling of the house is the last resort, we look at all other options first." When the case manager was relaying her view during her abusive telephone call and prior to the Determination being handed down I asked this question over a dozen times. I was provided with obscure and differing odd responses on each occasion.

To this day I am uncertain as to why homelessness for my family was provided as a consequence to the proven bank misconduct instead of the multitude of other remedies that could have been applied, the lender would have been held accountable and my family would not have continued to live through the decimation this matter has caused.

FOS Dispute re: Maladministration in Lending [Mother's case]

The FOS took 9 months before contacting myself as my Mother's representative in her case and stated that we were 'out of time' to have this matter investigated based on their terms of reference; the loan had been rescinded or discharged within 2 years.

Having written to the FOS 'legal' area and explaining that we could not have reasonably have become aware of the maladministration until [having taken over a year of battling for some file copies] and as soon as we become aware, after the receiving of some of these file copies, we lodged the dispute. In addition, that maladministration had occurred and was proven in my case and that my Mother's maladministration case was the catalyst for the mortgage fraud by the bank and their agent. FOS ignored these material facts also. I provided them with the NSW Statute of Limitations Act and asked why this 'general legal principle' was not being applied [ie: giving a consumer 6 years to become aware of the fraud] as our contracts are governed by the NSW legislation, FOS ignored this fact also and their obscure terms of reference of 2 years trumped actual legalisation.

Although our cases are independent and within their own merit they are very much entwined due to the actions of the bank's agent and the banks employees. When initially assessing my matter the FOS failed to investigate the loan origination thoroughly and the involvement of my Mother's lender in this mortgage fraud and it's impact on both cases. If this competent, lawful and unbiased process had occurred at the dispute lodgement/investigative stage of FOS, my Mother would not have lost her home and I would not be continuing to seek justice for our cases years later while now battling with the bias and incompetence of the CIO to hold the lender to account. [NB: have moved from FOS to CIO].

CIO Dispute re: Breach of the ASIC Debt and Recovery Act, Serious Misconduct, Concurrent Wrong-doing.

After rejecting the Determination that would leave my family on the streets for the banks wrong doing I attempted to negotiate a reasonable settlement with them directly. After several attempts the banks legal counsel sent the following: 'the offer', a default notice, a deed of release, a defamation suit all in separate envelopes arriving on the same day. The offer contained a clause that 'I was to move my middle child out of the home in 3 years time to advance them further funds.' My son was 12 at the time with intensive needs, they had been on notice of these particulars for some years prior to the 'offer'.

I lodged a dispute with the CIO for the significant breach of the ASIC Debt and Recovery Guidelines due to the intentional duress and attempts to intimidate me during the negotiations. The dispute was inclusive of the serious misconduct and concurrent wrong doing that had transpired between 2014 to present that had not been addressed by the EDR scheme as this conduct was unacceptable.

CIO responded with the following;

- the concurrent wrong doing and serious misconduct had already been dealt with by FOS in spite of my writing to them on three occasions and outlining the time period of 2014-2016, the

provision of evidence and the significant misconduct that were not investigated by either EDR scheme. They have continued to ignore the actual dispute to date.

- The CIO claim that the [redacted] were within their rights to issue the default during the negotiations to settle the matter in spite of the evidence clearly outlining that this lender had been orchestrating the repossession of the property prior and during the negotiations and evidently were not acting in good faith to settle the dispute.
- The CIO have ignored the conduct of the lender and their legal counsel when negotiating and have deemed the attempts to intimidate and inflict duress on me to accept their injurious 'offer' as acceptable, ie; on the same day the 'offer' arrived, the default arrived, the deed of release arrived, the defamation suit letter arrived. The CIO see no issue with this conduct during a negotiation to settle this long standing matter.
- The CIO see no issue with this lender and their legal counsel stating to the CIO, 'unfortunately we do not have any notes or documents pertaining to the discussions regarding the negotiations with the third party assigned to negotiate.' The CIO have taken the word of the lender and their legal counsel that there is no documentation to establish whom was involved in the construction of the 'offer' which included the moving of my child out of our home to give them further funds. The CIO have accepted this clause as appropriate. This is sickening to any parent or morally balanced human being.
- The CIO have ignored the evidence provided to them that the defamation suit letter was not in the exchange of documentation between the lender and the CIO. The CIO have accepted, in spite of the evidence provided, that there is nothing to see here with this misconduct.
- The CIO have accepted the word and misconduct of this lender and their legal counsel and have failed in their duties to investigate, act fairly and competently and not display brazen bias to this lender by enabling this lender to be void of any thorough investigation or accountability.

CIO Dispute re: Lenders Mortgage Insurance Fraud

During the previous dispute the lender requested that the CIO "do not show the borrower" the complete exchange of documentation between the CIO and the lender.

On receiving the attached diary notes in some of the file that was sent by the CIO I raised my concern with the CIO that this was another set of diary notes differing from the others already obtained over time.

These diary notes evidence, without any doubt, that this lender has engaged in insurance fraud.

The CIO have refused to acknowledge that their exchange of documentation has provided the evidence that is of very serious concern and are now citing, "this LMI policy has nothing to do with

you and we are therefore unable to consider this part of your complaint any further".

I note; I paid for the LMI policy, my personal particulars have been used fraudulently to obtain this policy, every hardship application caused the insurer to be provided with my personal particulars which subsequently caused further detriment to myself as the third party to this policy and this lender OWNS THIS LENDER'S MORTGAGE INSURANCE COMPANY!! Maladministration has already been proven and recorded and the provision of literal black and white evidence to substantiate all disputes but this has not been enough to prompt the CIO to conduct any actual investigation into this lender's serious misconduct. The lender knows they will never be held accountable for their illegal practices by the CIO.

NB: The CIO are also on notice that this lender intentionally misled the OAIC regarding this matter when I was trying to gain access to my information. The customer service relations officer, when I dealt with him initially to gain access to my documents, wrote to my Federal Member, whom had been cc'd into all communications, and stated, "This request for information by Ms Matheson is frivolous and vexatious".

The FOS and the CIO have allowed this lender to mislead them and dictate the outcomes of each of these disputes.

To date, the CIO continue to cite, "there's nothing to see here!"

Further information in relation to the TOR

- The efficiency of both the FOS and the CIO is deplorable, eg: 2 years to determine the obvious mortgage fraud, 9 months to cite, 'you are out of time', 6 months to review the other disputes but then cite, 'we cannot consider your dispute'.
- There is no equity within the EDR scheme, the bias and enabling of the financial service providers and the detriment caused to consumers utilising this alternative to court is so brazen it is confronting for the average consumer.
- The FOS and CIO advertise that they 'apply general legal principles'. This is false and misleading, the cases are always complex due to the nature of the disputes and their terms of reference/rules are so obscure they are used to close disputes regardless of the evidence provided and the legal principles that govern our states and financial sector are consistently ignored.
- There is no true and applied accountability for lenders when misconduct is viewed within a dispute. To date the breaches of the NCCP, the Corporations Act and the many other codes, acts and guidelines in all of my disputes have **never been reported to ASIC nor the CMCC**. It is a requirement of the EDR scheme to report significant breaches by the lenders, these systemic issues are not being reported. The lenders are more than well aware that

ASIC does not investigate individual cases nor will they address the systemic issues appearing in the EDR schemes. eg; Mortgage fraud is systemic in every state and to date there is no entity addressing this fraud and illegal practise.

- I hold a personal view that what is reported within the public domain by FOS and CIO via their newsletters and annual report is not reflective of the ongoing battle consumers are facing when trying to use these schemes nor a true reflection of what is really occurring within the sector.
- The regulatory costs are causing a conflict of interest as is the lack of independence of these schemes. The FOS and CIO are literally businesses, they state that clearly. They are funded by those that they are investigating. Without an actual entity that is completely separate from the financial sector where ex bank employees and ex bank lawyers move within consumers will never ever have a fair and transparent forum to raise these serious disputes.

Consumers deservedly should have their cases reopened and every case requires an independent forensic review by a panel of experts that are completely removed from the sector, no ex bank employees, no ex bank lawyers, no one involved in the sector, no one with a vested interest to manipulate the findings or whom is not of sound moral judgement and cares little for his fellow consumer.

Families, the elderly, farmers, small business have all been decimated by this financial sector for years. To then attempt to have a matter dealt with by these businesses as an alternative to a lengthy court process is causing as much distress and anguish as the entities whom caused the dispute.

The FOS and CIO need disbanding, their businesses are causing significant consumer detriment.

The definition of an Ombudsman is ; An ombudsman or public advocate is usually appointed by the government or by parliament, but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights. The FOS and CIO are merely a **business** that are funded by those they investigate, to be named 'Ombudsman' is false, misleading and a serious misrepresentation of fact.

With all sincerity, I hope that this review reveals the truth as consumers do not deserve what they are being delivered by these 'schemes'. A royal commission which can provide a forensic investigation of the issues raised within this review and the broader sector is critically overdue and paramount if there is to be any positive change to this sector and it's framework.

Sincerely,

Michelle Matheson

