

Chris and Claire Priestley

2 September 2014

The Commissioners
Access to Justice Arrangements
Productivity Commission
Level 2, 15 Moore Street
CANBERRA CITY ACT 2600

Dear Commissioners,

RE: THREE LETTERS SENT TO OUR BANK

On 4 July 2014, this is the first of three letters Chris and I sent to our bank recently.

“ ... Entering into a defining Australian tradition, in 2004 Chris and I bought out the balance of the family farm from our family members and it became an independently owned and operated agricultural business.

Tragically, for us, by 2013 the [Bank] foreclosed on our land and took away our livelihood. Such events have far reaching emotional, social and cultural implications for individuals, the farming community and broader Australian society. However, this letter will focus on the actions of the Bank and its unconscionable behaviour when dealing with us, and our business.

It is hoped this letter will serve as a catalyst for you and the ... directors to support legislative change that will protect all farmers from such abuses at the hands of the Bank and other banking institutions in the future.

An Incorrect Contract

We first signed a contract with the Bank in October 2004. This provided us with a loan of \$3 million in order for us to buy the balance of our farm from our family. In 2006, the Bank loaned us a further \$1.2 million to buy the next door property and to increase our available working capital.

Upon signing a Standard Facility Offer, we became protected by the provisions of the Code of Banking Practice. This code was developed in 2003 to protect banks' primary producer and small business customers. It would ensure appropriate monitoring of the banks' conduct, starting with investigating all complaints. Likewise, at about the same time, the ABA stated the revised 2004 Code ensured all banks, not just the Bank, were committed to acting "fairly and reasonably towards customers in a consistent and ethical manner".

Unfortunately, the Bank could never fulfil this seemingly watertight contract provision as it, being authorised to do so by you and your directors, had changed the contract before we signed it. The Code provided an opportunity for sixteen banks to establish a Code Compliance Monitoring Committee (CCMC) to investigate and make a determination on all agribusiness or small business customer complaints.

However, on 20 February 2004, the Code Compliance Monitoring Committee Association (CCMCA) had established (an unpublished) constitution. The CCMCA had the same members as the Australian Bankers Association. These people were the CEO's of the nations leading banks. You and the Bank directors will have authorised your chief executive to be a member of the CCMCA.

In the constitution, the CCMCA limited the powers and authority of code compliance monitors to hear complaints. The constitution stated the CCMC must not consider a complaint, if:

- it relates to the CCMCA member's commercial judgement about lending ...
- the CMCC becomes aware that a complaint may be heard in another forum ...
- the CMCC thinks there is a more appropriate forum to deal with the complaint ...
- the CCMC considered the complaint is frivolous or vexatious .

As one of the member banks of the CCMCA, you and your directors imposed restrictions that clearly prevented the CCMC from making "a determination on any allegation from any person that a code subscribing bank breached the code" as clearly stated as one of the key provisions in the contract.

While the bank and its Managing Director of the Bank, under your and the other directors' auspices, was fully aware that the contract they signed with us was based on a falsehood, each of you made no attempt to change the contract or to make the CCMCA constitution available to us over two contract signings.

Hard Times

Between 2004 and 2009 we suffered an extraordinary series of bad seasons. While weather pressures are always stressful for farmers, the family felt it had some economic protection from the ravages of the weather.

Firstly, we believed the Bank was the most experienced agribusiness bank in the region. It had such a prominent agribusiness reputation it would lead it to an understanding that any investment in a weather dependent business came with an element of risk. This meant profits were only achievable once severe weather had passed.

Secondly, in 2008, the bank with such a good reputation, was provided a copy of our farm's valuation that noted the property was worth \$9.5 million. By 2010, we owed the Bank only \$5.5 million, giving it plenty of collateral in the land itself.

From 2009, we were trying to continue farming despite a drought that had lasted 5 years. In an attempt to turnover significant profits, we approached the Bank for crop funding, in particular for cotton. The family wished to plant cotton as cotton prices were high and our cotton-land could be irrigated. Unexpectedly, the Bank denied the loan and told us to sell the farms without crops being sown.

Seeking resolution to an unexpected and seemingly baffling decision, we utilised our rights provided to us under the Banking Code of Practice contract. In 2010, we reluctantly filed a complaint at the Bank regional branch at [REDACTED]. The complaint was delivered verbally.

The Code sets the precedent for a verbal contract when it states that complaint resolution can be delivered verbally. At the time, we requested a copy of the written version of our complaint. The Bank agreed to forward a copy of the complaint to us in writing, when sent to higher powers within the Bank. This request, whilst agreed to at the time, was subsequently denied.

In 2010, we were still not able to secure crop funding. We believed that our relationship with the Bank had broken down due to filing our complaint.

Complaint Process

Following our complaint, the Bank took the destructive step of forcing us into mediation, which signalled the start of an Enforcement Action. We were reluctant to attend mediation as it could have a lasting implication on the farm and business. We knew that if mediation was unsuccessful we could not secure specialised crop funding to sow an irrigated crop from other lenders. Other lenders would not invest in the crop when the farmers were at risk of losing their land and the lenders their cropping funds at another bank's whim.

While we resisted the Bank's call to attend mediation, the family felt we were being bullied into it and had no choice but to accept a situation where, at the least, we had proved to the Bank that we were committed to saving the farm. On 21 July 2010, we attended the mediation with the Bank in good faith, but noted we did so under pressure.

What we were unaware of at the time was the fact that the bank could use mediation to ensure that our complaints would never be investigated by the CCMC. Whilst this was more serious than we knew, it was financially disastrous, as the Bank, authorised by you and your directors, was one of the architects to the CCMCA constitution. This ensured that the monitors did not have to investigate complaints once we attended mediation.

No farmers or small businesses could ever have known about the problematic constitution as the code subscribing banks had kept details of it out of reach of Bank customers since 2003.

The family only found out about the changed contract recently and when we did, we filed it as a complaint with the bank. We addressed the complaint to Bank Directors in 2013. By now, however, it was clear to us that the Bank was not going to investigate any of our complaints as required under the contract.

Outcome

In 2012, we hesitantly responded to an action by the Bank that required us to litigate our differences with the bank in the Courts. By this time, we were experiencing financial hardship due to lack of cash flow, hence profits, with the business. What we were unaware of was that code compliance monitors would now have another reason to not investigate complaints as we had attended mediation (one of the forums), and now attended Court as the Bank, under your and your directors' policies, had filed proceedings.

In 2013, we were forced to exercise our rights, as unrepresented litigants, and take the Bank to Court. Thus, concluding the complaint with a David and Goliath battle alleging the Bank was able to rely on a corrupt banking code. However, by 2013, when we attended Court the Bank and its lawyers did not disclose to the court the Problematic Code and its unethical use.

Chris and I are even more convinced that the ASIC was aware of the banks' unconscionable behaviour by 2010, as it would have seen a copy of the Australian Bankers' Problematic Code paper, commissioned by the Council of Small Businesses and published by the Senate in December that year. Despite this, ASIC remained silent, making no attempt to investigate the banking scam or provide assistance to our family.

The Court found against us. This was clearly helped, no doubt, by the Court not finding it feasible for the Bank policies supported by you and your directors, and other subscribing banks to keep this corrupt conduct covered up for 10 years. Understandably, the Court had

faith that the Bank's lawyers, as officers of the Court, would not have kept such a potentially corrupt arrangement from a Senior Judge in the Supreme Court.

With all lines of dispute resolution now closed or shut-off for us, we simply hope that the agribusiness politicians are able to see laws developed so that corrupt banking conduct, such as that espoused by the Bank, does not continue and the ineffectual regulators are replaced and if appropriate prosecuted. Considering our circumstances, it is apparent that all farmers that signed the Bank contracts between 2004 and 2013 have been held to ransom by banks regulators that, when fully briefed some time ago, failed to investigate the code subscribing banks unconscionable conduct.

Chris and I are still unaware of the reason why the Bank as the leading agribusiness banker, chose to stop providing investment in our business.

Our experience and complaints have still not been investigated ...”

This letter demonstrates just how far the Bank will go to silence complaints, once you allege it breached the contract. I suggest the Bank sold all its Agribusiness customers dishonest loans, as the Australian Bankers Problematic Code paper demonstrates.

You might refer this letter to the current banking reviews, and to the parties that are supposed to be protecting bank customers.

Sincerely,

Claire Priestley

Chris and Claire Priestley

2 September 2014

The Commissioners
Access to Justice Arrangements
Productivity Commission
Level 2, 15 Moore Street
CANBERRA CITY, ACT 2600

Dear Commissioners,

RE: THREE LETTERS SENT TO OUR BANK

On 4 August 2014, this is the second of three letters Chris and I sent to our bank recently.

“ ... I wrote to you on 14 January 2013 and 28 July 2014 and, on both occasions, suggested your agribusiness contract was unconscionable, owing to a banking scam.

The [bank] will have a copy of the Small Business Council's submission to the 2010 Banking Inquiry. It states the Code Compliance Monitoring Committee Association's constitution, that the ABA members approved, allowed the [bank] to 'keep hidden' from agribusiness customers how, at its discretion, it could avoid having to investigate any complaints.

The covert constitution made the contract between the bank and us misleading and deceptive. No agribusiness customer would sign a financial contract with the ... bank knowing this was the case. It gives the bank a free hand to do as it likes, with full knowledge that no substantive complaints will ever be heard, which is unconscionable and corrupt. This is exactly what has happened in our case.

After refusing our application for additional finance, the bank forced us into mediation. This took away any option we had to fund a new crop. It then foreclosed on our loan and exhausted our capital in exorbitant fees. The only option we had left to seek redress was through the Code Compliance Monitoring Committee. Devastatingly, we found this option had been closed off ten years earlier by the covert constitution. And so the trap was shut.

The tragedy is that we now know we are, in all likelihood, not the only farmers that this has happened to. It seems a pattern of behaviour the bank might redress quickly, if only to avoid another public banking scandal.

We require the bank to honour its contract with us and investigate our complaint and to provide us with a written copy of its report, as promised in the code and required in our contract...”

This letter provides an insight into how the bank officers also rely on the problematic loan package, ignoring allegations of dishonest conduct by the bank, and dismissing its customer's rights under the contract.

I have read the Australian Bankers Problematic Code paper, which suggests that the agribusiness customers have no rights outside the courts, due to the introduction of a deceptive and unconscionable contract.

These problematic contracts may help to explain the negative press that major banks are experiencing.

Sincerely,

Claire Priestley

Chris and Claire Priestley

2 September 2014

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Productivity Commission
Level 2, 15 Moore Street
CANBERRA CITY ACT 2600

Dear Commissioners,

RE: THREE LETTERS SENT TO OUR BANK

On 12 August 2014, this is the third letter that Chris and I sent to our bank.

“ ... Further to my email to you yesterday and my letters of 28 July 2014 and 4 August 2014, I will attach the following documents, with the relevant points of reference below.

This may assist you when considering our complaint that the Agri-Business contract we signed was unconscionable and that the bank relied on a banking scam to avoid having to investigate complaints.

The relevant documents in relation to the complaint include:

- A. 1 October 2014 letter from the bank's Agribusiness Manager to Mr Priestley and Miss Priestley titled, 'Farm Management Account Facility Approval Advice', "setting out agreement between you and the Bank for your Farm Management Account Facility" (attached and marked "A").
- B. River Station Partnership's National Farm Management Account Farmers Choice Statement starting 30 October 2004, and our bank statement ending 30 November 2004 (attached and marked "B").
- C. The ... Bank's Farmers Choice Package Agreement (version effective 31 May 2004) (attached and marked "C").
- D. 2 April 2008 letter from the bank's Agribusiness Manager, to Mr and Mrs Priestley titled, 'Letter of Offer for Christopher William Priestley & Claire Milla Beverly Priestley, carrying on business under the name of River Staation Partnership ("you")' (attached and marked "D")
- E. 25 May 2010 letter from the bank's ... Office of the Customer Advocate, on behalf of [the General Manager] to Mr and Mrs Priestley titled, 'Re: E-mail to [REDACTED] - 19 March 2010' (attached and marked "E").
- F. 22 November 2012 letter from Claire Priestley to [the Bank's] Chief Executive Officer ... titled, 'Re: Code of Banking Practice and ... the Bank's breach of contract' (attached and marked "F").
- G. Affidavit of Claire Milla Beverley Priestley dated 5 December 2012 (attached and marked "G"), with annexure referred to in the affidavit as "H".

- H. Transcript of Garling J, Wednesday 5 December 2012 - 2011/292621, the [Bank] v Christopher William Priestley and Claire Milla Beverley Priestley (attached and marked "H").
- I. Code Compliance Monitoring Committee Association Constitution dated 20 February 2004 (attached and marked "I").
- J. Garling J, RFD SC's judgment of the [Bank] v Priestley in the Supreme Court, New South Wales, Common Law Division (attached and marked "J").

Suggested points of reference in respect of the attached documents and marked:

A.

- "The Approval Advice is the agreement between you and the Bank for the Farm Management Account Facility ("Facility"), which is outlined in this advice." (Page 2)
- Credit Fees and Charges – "Application Fee: \$5000. The Application Fee is now due and will be debited from the account. The Application Fee is not refundable." (Page 5)
- The Code of Banking Practice: "The Bank has adopted the Code of Banking Practice and relevant provisions of the Code apply to this facility, if you are an individual or a small business customer (as defined by the Code)." (Page 7)

B.

- Farm Management Account Farmers Choice transaction details: 3 November 2004 Loan Application Fee debits \$5,000. (Page 1 of 2)

C.

- Terms and Conditions:
 - i. Clause 1. Agreement to open account. "You have requested that the Bank provide you with a Farmer's Choice Package ("Package") on the terms of this Agreement." (Page 2 of 11)
 - ii. Clause 15. Code of Banking Practice. "The Bank has adopted the Code of Banking Practice and the relevant provisions of the Code apply to this facility, if you are an individual or a small business customer (as defined by the Code)." (Page 6 of 11)
 - iii. "Application Fee \$500.00" (Page 9 of 100)
 - iv. Annexure "A" "This is Annexure "A" referred to in the Farmers Choice package between Christopher William Priestley and Claire Beverley Priestley carrying on business under the name River Station Partnership and the ... Bank..."

D.

- "Our offer is subject to the terms and conditions set out in...(b) the Specific Conditions (if any)..." (Cover page)
- Business Letter of Offer date 2 April 2008 (Page 1 of 36)
- Terms and Conditions:
 - i. General Conditions (Page 15 of 36)
 - ii. Clause 20. Code of Banking Practice: "the [Bank] has adopted the Code of Banking Practice and relevant provisions of the Code apply to these

facilities if you are an individual or a small business customer (as defined by that Code).” (Page 25 of 36)

E.

- “This is the proper forum for the resolution of these matters and I trust it will bring about the right outcome for all involved.”

F.

- “I now make a final demand that you bring to the attention of the Court complaints you failed to investigate as set out in the Code of Banking Practice and justify the reasons why you breached the Code. The Code was an important part of the contract we signed with the ... Bank in 2004, and as a director of the Bank and the Australian Bankers Association you must have known this.”
- Complaint No. 1: “The bank failed to deliver on any promises in the Code of Banking Practice...”
- Complaint No. 2: “When referring to appendix “A”, the complaint uppermost is Clause 2.2 when it said it will act fairly and reasonably towards us...”
- Complaint No. 3: “The bank stubbornly refused to investigate a [series] of complaints we referred to in 2010...”
- Complaint No. 4: Relevant clauses in the Code set out in points (a) – (h).
- Complaint No. 5: “[The above] demonstrates promises made by the Bank in 2004 were worthless.”

G.

- Points raised in the affidavit relevant to the Code of Banking Practice:
 - i. Point 7: “An issue that we always wanted to deal with in our previous defences was the Code of Banking Practice, in particular its Dispute Resolution section.” (Page 2 of 8)
 - ii. Point 8: “The bank failed to follow the Code of Banking Practice, that is part of the contract, in relation to complaints...” (Page 2 of 8)
 - iii. Point 16: “Instead of following the dispute resolution section of the Code of Banking Practice to deal with our complaints, the bank chose a forum in which we couldn’t solve our complaints.” (Page 4 of 8)
 - iv. Point 21: “The outcome of the mediation was that we entered into an agreement unwillingly because of the pressure on us to comply with the Farm Debt Mediation Act or face immediate court action.” (Page 4 of 8)
 - v. Point 25: “The Code of Banking Practice is part of our contract, the contract makes no reference to Farm Debt Mediation. [It] was not the proper forum to deal with our complaints...” (Page 5 of 8)

H.

- “Ms ... for the Plaintiff, The Defendants appeared in person.” (Page 1 of 17)
- References to the Code of Banking Practice, the Constitution and the Code Compliance Monitoring Committee:
 - i. Page 10, line 29: “CHRISTOPHER PRIESTLEY: We have been given a copy of the constitution that the Code of Banking Practice is actually bound by an association that we did not know and that your complaints can never be heard...”
 - ii. Page 11, line 1: “HIS HONOUR: What constitution are you talking about?”

- iii. Page 11, line 3: "CLAIRE PRIESTLEY: ... These are attachments that I was going to hand up."
- iv. Page 11, line 7: "HIS HONOUR: Are there more to be handed up?"
- v. Page 11, line 9: "CLAIRE PRIESTLEY: This is from last week, the affidavit."
- vi. Page 11, line 11: "HIS HONOUR: Best you hand that up, too. ([Affidavit] handed up.)"
- vii. Page 11, line 42: "CHRISTOPHER PRIESTLEY: ...the word forum is in the constitution but it is not in the pamphlet."
- viii. Page 12, line 11: "HIS HONOUR: ...What is it about the content of the constitution of the code and compliance monitoring committee that you say is relevant?"
- ix. Page 12, line 14: "CHRISTOPHER PRIESTLEY: I will hand it up."
- x. Page 12, line 19: "HIS HONOUR: Hand the constitution up. (Document handed up.)"

I.

- Clause 2.1 Definitions: "**Forum** means any court, tribunal, arbitrator, mediator..." (Page 2 of 24)
- Clause 8.1 Consideration of complaints about code breaches

The CCMC must consider any complaint alleging that an association member has breached the code, except that the CCMC must not consider a complaint:

(b) "if the CCMC is, or becomes, aware that the complaint:

(i) is being or will be heard...by another Forum...In such a case the CCMC must not consider the relevant complaint until the relevant Forum has determined, or declined to determine (for whatever reason), whether the breach of the Code has occurred..." (Page 14 of 24)

(c) "if the CCMC thinks there is a more appropriate Forum to deal with the complaint." (Page 15 of 24)

J.

- **Orders** by Garling J, point 46. (Page 9 of 9)

The above points demonstrate a pattern of deception that the directors should have considered it was unconscionable 10 years ago. Further, we believe that the director's conduct is under question as we had to trust the bank to investigate our complaints, and it failed.

When the bank failed to investigate the complaints we had no recourse, as it was a controlling agent and one of the principle financiers of the Australian Bankers Association, the Financial Ombudsman Service and the Code Compliance Monitoring Committee. All these bodies were aware of a corrupt relationship between banks and the Code Compliance Monitoring Committee Association's constitution, a document approved by the bank directors in 2004.

Your early response advising what action the bank directors will take is required by Chris and me. We would consider waiting two weeks if that is how long you believe it would take the Bank to consider these complaints ... "

On 14 January 2013, I wrote to the bank's directors requesting the bank withdraw from the proceedings against us until allegations of misleading conduct, resulting from the changed contractual terms and nondisclosure were fully investigated. The directors did not reply.

Instead, the bank and its lawyers continued prosecuting us while remaining silent on the changed contractual terms and nondisclosure: Relying on silence to mislead the court and the respected juror.

The chain of documents above provides evidence of an intricate web of deception used by the bank to ignore contractual duties provided to its 12.4 million customers, whilst promoting a commitment to comply with the high-standards in the Code of Banking Practice.

Sincerely,

Claire Priestley

Enc: Marked "A" – "J" are the above documents that are available on request.