



Counter  
Corruption  
Analysts

Our ref: 161109 Doogan CCMC

9 November 2016

Mr Christopher Doogan AM  
Independent Chair  
Code Compliance Monitor Committee  
PO Box 14240  
MELBOURNE VIC 8001

Dear Mr Doogan,

**Re: Chris Priestley & Claire Priestley v National Australian Bank**

We thank you for your correspondence of 4 November 2016 and the CCMC's letter of 27 October 2016.

**NAB's Binding Agreement**

Our clients signed the Farmers Choice Loan package with the National Australian Bank (the bank) in 2004, and again in 2008. The contract included a promise to comply with the Code of Banking Practice (the code).

Our clients understood that the bank advised its customers, in 2004, that the code was a binding agreement. They require the CCMC to investigate alleged breaches of the code under clause 34, which is within your jurisdiction.

The NAB's agreement notes in clause 34 that the bank agreed:

(b) that the CCMC's functions will be:

- (i) to monitor [the bank's] compliance under this Code;
- (ii) to investigate, and make a determination on, any allegation from any person that [the bank] breached this Code ...

(i) to empower the CCMC to name [the bank] in connection with a breach of this Code or in the CCMC's report, where it can be shown [the bank] has:

- (i) been guilty of serious or systemic non-compliance

**Priestley's Allegations**

On 4 July 2016, the CCMC stated that it understood the Priestleys alleged the bank failed to comply with the following obligations under the code:

- Clause 2.1 (d): provide information in plain English

- Clause 2.2: fair and reasonable
- Clause 25.1: provision of credit
- Clause 25.2: financial difficulty
- Clauses 35.7 and 35.8: dispute resolution

The CCMC claimed that the bank also said these concerns, which are breaches under the code, were considered in the court, by the Australian Securities and Investment Commission and the Senate Economics Reference Committee (*the compliance reviewers*).

### **Misleading Statements**

Our clients believe that the bank misled the CCMC in relation to investigations by *the compliance reviewers*. They requested the CCMC provide them with copies of the documents that the bank refers to in which it is alleged that the five code breaches were investigated.

We understand the CCMC will confirm that each of *the compliance reviewers* dealt with the above breaches. Otherwise it concerns our clients that the bank, in 2016, made misleading statements. The CCMC will appreciate that there is a well recognised principal of law that a statement is misleading even if literally true but it fails to say something that, if said, would alter the meaning of what was said.

Our clients have not sighted statements made by *the compliance reviewers* in relation to their alleged code breaches. Therefore, our clients allege the bank may have breached the code in relation to the 2016 allegations. It is noted that these allegations were referred to Ms Sally Davis, Chief Executive, CCMC, in our letter of 2 November 2016 (attached) in relation to the bank's practices.

### **Jurisdiction**

Mr Christopher Doogan, AM, Independent Chairperson, CCMC, might explain to our clients what he is referring to in his letter of 4 November 2016 in relation to the limits of the CCMC's jurisdiction. Our clients have no reason to believe that the CCMC is not required to comply with the bank's promises in 2004.

The CCMC has a duty to comply with the binding agreement the bank made with our clients in 2004 and 2008. In these circumstances, the Chair might explain the issues he is referring to that preclude the CCMC from considering allegations within the limits of its jurisdiction.

### **Access to Justice**

Our clients have asked to attach a copy of their publication that was published by the Parliament in 2014, in relation to these allegations.

This paper sets out the circumstances in which the Priestleys claim that the bank failed to comply with its binding agreement. As the bank's regulators, the CCMC has a responsibility to consider events that occurred prior to the bank claiming

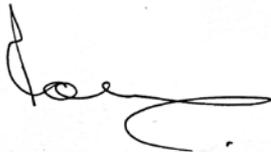
*the independent reviewers* investigated the above allegations, which include code breaches, misleading statements and false promises.

If the CCMC is alleging that it has jurisdiction limits that preclude it from carrying out its responsibilities under the code, our clients allege that the bank may have acted to pervert justice.

In these circumstances, our clients reserve their rights to amend the allegations set out above.

Should you require any further information, please contact the writer.

Yours sincerely,



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Enc: Submission 61 to the Impairment of Customer Loans Inquiry in 2015;  
Submission DR334 to Access to Justice Arrangements

Copy: Mr P Khoury, Managing Director, Cameron Ralph Navigator; Mr Geoff Fader, Chair, Tasmanian Small Business Council.