

Dear Sir John

I am writing to you in your capacity as the Chair of the board of directors of ANZ New Zealand.

On 8 November, ANZ will be forcibly auctioning my home. It is doing this to recover debt that accrued after ANZ, through its then subsidiary the National Bank of New Zealand, to my ex-partner's company. Through Antonia Watson [Managing Director Retail and Business Banking for ANZ New Zealand] I understand that my case has been discussed within the board, so you are probably aware of it.

For the last five years, I have been challenging this lending with ANZ on the grounds that it should have disclosed or even sought my approval for any extension of credit against my guarantee. ANZ's position is that it had no obligation to disclose this.

There is no direct legislative compulsion for disclosure on ANZ for company lending as there is for personal lending under the Credit Contracts and Consumer Finance Act 2003. That notwithstanding, ANZ's position is weak at best:

- The Code of Banking Practice places an obligation on ANZ to act fairly and reasonably towards its customers, in a consistent and ethical way. ANZ's conduct in extending these loans to my ex-partner without disclosing them to the guarantor was neither fair, reasonable or ethical. ANZ's conduct since I first raised my concerns with it in the way it has withheld information, misrepresented the law and fabricated information has also been neither fair, reasonable or ethical. ANZ has been consistent however that's not always a good thing.
- The Code also places an obligation on ANZ to only provide credit or increase a credit limit when it believes the customer will be able to meet the terms of the credit facility. It is difficult to accept that a company with inconsistent income and a director earning less than \$50k p.a. could meet the terms of lending on loans totalling over \$400k.
- Most importantly, the Code places specific obligations on ANZ to inform any party providing security, of the customer's obligations when a credit facility is approved. ANZ has stated that the Code's requirements in this area apply to guarantees and security differently. While that may apply for some banks, ANZ's own documentation, including the original guarantee and loan documents, lists guarantees as forms of security.
- Various ANZ staff have said that ANZ has an obligation to disclose lending to guarantors.
- In 2016, ANZ accepted my position without qualification or modification. It reduced my liability under the guarantee to the value of the one loan that it not only disclosed to me and but for which it required my approval. ANZ staff have said that this was a result of my persistence arguing my case. This reduction (approx. 75-80% of the debt at the time) is not the action of a bank that is in the right.

If I was an independent guarantor, this reduction might be attractive however as the company remains joint property, I am still liable for 50% of its total debt. I have argued that the total debt should be reduced to this amount and that this reduction should take effect from the time that I first raised my concerns.

I do not hold my ex-partner responsible for this additional lending against her company. During the period of this lending, she was not well and recovering from what we know now was a serious head

injury. By concealing these loans from me, ANZ denied me any opportunity to make informed decisions about continuing the guarantee or to prevent or mitigate her lending.

ANZ's position is further weakened by its conduct since I first raised my concerns

- I requested that ANZ keep me informed of the company's financial position. ANZ said that it had no authority to disclose this information. When I finally obtained copies of the loan documentation in 2016, there was a specific clause authorising disclosure of this information to guarantors. ANZ had no grounds to withhold this information from me.
- Further to that request, in 2012, the Privacy Commissioner determined that information relating to jointly-owned property used as security under a guarantee should be considered personal information for the guarantor and be releasable to the guarantor when requested. It is not credible that ANZ would not be aware of this determination.
- ANZ has cited the Credit Contracts and Consumer Finance Act 2003 as preventing disclosure of this information to me. That is not true. By definition, this act does not apply to company lending. It is not reasonable that ANZ would not know what legislation applied to various lending circumstances.
- To support ANZ's position that the Code of Banking Practice, a senior manager fabricated a definition of 'security provider' that he attributed to the Code's glossary. In truth, this term does not appear in the glossary or the text of the 2002, 2007 or 2012 versions of the Code.
- ANZ told us that the company's default on its loans would affect our daughter's home as well. As a result, her and her partner cancelled their wedding and took on considerable additional debt to renovate it to increase its equity, so they could get an independent mortgage. Once they had committed to this course of action, ANZ changed its mind and apologised saying that staff had looked at an incorrect title.

ANZ's conduct has added extra years to the resolution of this issue. It has also caused immeasurable stress on me and members of my family. In your position and the chair of the board, I am requesting that you encourage the board to:

- Cancel the impending auction of my home on 8 November.
- Recalculate any debt from November 2013 when I first raised my concerns with ANZ. The delays from this point are a result of ANZ's conduct and we should not be penalised for them.
- Honour ANZ's acceptance of my position in 2016.
- In writing to you at this time, I note the massive profit just posted by ANZ New Zealand, recent comments by yourself and ANZ's CEO, Shayne Elliott, on the conduct of banks in New Zealand. ANZ has also recently removed incentives for retail sales and I would offer that such incentives may also have been a factor in this reckless lending.
- ANZ has suggested I take responsibility for my actions – I am happy to – but in this case I would respectfully suggest that it is past time for ANZ New Zealand to take responsibility for ITS actions and do the right thing...

Simon O'Neill