



# Determination

8 December 2014

**Credit  
Mortgage lender  
Contract not unjust  
Consumers able to protect their own interests  
Compliance with lending guidelines  
Deferred Establishment Fee not unlawful**

# DETERMINATION

**Consumers:** Mr & Mrs D

**Financial Services Provider (FSP):** Mortgage lender

**Date:** 8 December 2014

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## Summary

1. I find that the consumers' complaint against the FSP has not been made out; in particular:
  - (a) the loan agreement the consumers entered into with the FSP was not an unjust contract; and
  - (b) the Deferred Establishment Fee (**DEF**) charged by the FSP was adequately disclosed, correctly calculated and was not otherwise unconscionable or in breach of the law.

## Background to the complaint

### The consumers

2. The consumers were born in 1967<sup>1</sup> and 1965.<sup>2</sup> They are married with three children. In 2006, the consumers owned six properties, one of which was their principal place of residence, five of which were rented out as investment properties. In early 2007, the consumers decided to purchase a seventh property as their new home.

### The FSP and mortgage broker

3. The FSP is a mortgage manager that rebrands loans provided by wholesale funders as its own and is also a securitiser of its own loans.
4. The FSP has a commercial arrangement with a mortgage broking company (**MBC**). Under this arrangement, which is documented in a Mortgage Origination Agreement, MBC is accredited to introduce loan applications on behalf of potential borrowers to the FSP, who then undertakes the credit assessment and loan approval process.

### The consumers' loan application to the FSP

5. Before the events giving rise to this complaint, MBC had already previously assisted the consumers with at least two loan applications to the FSP.<sup>3</sup>
6. On 9 March 2007, the consumers signed an application form for a loan of \$1,440,000, which appears to have later been altered to \$1,500,000. The loan applied for only required a low level of supporting information (**low doc**).

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<sup>1</sup> Mr D.

<sup>2</sup> Mrs D.

<sup>3</sup> As detailed in the FSP's response dated 26 June 2014.

7. Relevantly, the loan application form contained the following information:
- (a) personal information about the consumers (including their marital status, age, etc);
  - (b) the proposed loan amount was \$1,500,000;  
  
[In the copy provided to COSL, the figure \$1,440,000 has been crossed out and replaced with \$1,500,000.]
  - (c) the proposed loan term was 30 years;
  - (d) the proposed security was a registered mortgage over the property in Western Australia (**WA property**);
  - (e) Mr D was self-employed as an accountant for the previous seven years, earning an annual gross salary of \$625,000;
  - (f) Mrs D was not employed;
  - (g) the consumers were earning an annual rental income of \$58,500; and
  - (h) the WA property, which was \$2,400,000, with the balance of the purchase funds to be provided from the sale of one of the consumers' other six properties.
8. The consumers also appear to have signed two "Lo Doc Declaration of Financial Position" documents (**DOFP**) dated 9 March 2007, each of which recorded that:
- (a) the consumers were applying for a loan of \$1,500,000;  
  
[In the copies provided to COSL, the figure \$1,440,000 has been crossed out and replaced with \$1,500,000.]
  - (b) Mr D was self-employed as an accountant; and
  - (c) Mrs D was not employed.
9. Each DOFP also stated:<sup>4</sup>
- 2 I have requested the Lender and the Mortgage Manager not to require production of any documentary evidence of my income and assets. Accordingly, I understand that the Lender and the Mortgage Manager may not independently verify the information in my application concerning income and assets.
  - 3 I have carefully considered my financial position and, in accordance with your recommendation, have sought and obtained such financial and other advice as I consider appropriate in connection with the proposed loan.
  - 4 I am satisfied that I am able to meet the repayments on the proposed loan, as well as all of my other financial obligations (including living expenses) without hardship.
  - 5 I am not relying on the Lender or the Mortgage Manager to review my financial position to make a decision about whether I can meet the repayment obligations on the proposed loan without hardship.
  - 6 I understand that the Lender and the Mortgage Manager will rely on these declarations in considering my loan application and, if approved, in providing me with credit under any resulting loan contract.

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<sup>4</sup> All extracts and quotations in this Determination are copied verbatim unless stated otherwise.

10. On 13 March 2007, MBC sent the loan application form and the DOFPs to the FSP for assessment.

#### The FSP's assessment of the loan application

11. On 21 March 2007, following clear credit report checks, the FSP conditionally approved the consumers' loan.
12. On 30 March 2007, the FSP obtained a valuation of the WA property, indicating that the property was valued at \$2,100,000.
13. On 5 April 2007, the FSP made the following file note:

Clients have requested the maximum lending of \$1.5M. New serviceability calculator, Schedule 4 and Loans Summary emailed to [contact] at [third party bank] for urgent formal approval.
14. On the same date, the FSP completed a "Loan Serviceability Assessment", which indicated that the consumers could afford to repay a loan of \$1,500,000 based on their stated income.
15. On 11 April 2007, the FSP unconditionally approved the consumers' loan.
16. On 12 April 2007, the consumers signed and entered into a loan agreement with a third party bank,<sup>5</sup> with the FSP appointed as the mortgage manager. The interest rate payable was 8.25% per annum and the term was 30 years (with an initial interest-only period of five years).
17. Page four of the loan agreement provided that, if the consumers did not pay the establishment fee on the settlement date, the establishment fee would be waived unless, during the first four years of the loan term, the whole of the loan was repaid for any reason; in that instance, the consumers would be charged an appropriately scaled DEF.

#### Conduct of the loan

18. On 17 April 2007, the loan was settled and fully drawn.
19. From 17 April 2007 to 31 December 2008, the consumers' repayments were dishonoured on three occasions; otherwise, the consumers made their repayments as and when they fell due.
20. From 1 January 2009 onwards, the consumers' repayments were regularly dishonoured.
21. On 9 March 2009, the FSP made the following file note:

...phoned bwr he advises that he has both this property & an investment property on the market at the moment. Mr [D] has received an offer on the investment property but settlement is not set until the 30/4. Mr [D] is trying to have this settlement date brought forward. sending us a copy of the listing agreement on this property & also a copy of the offer to purchase on the investment property. Advised bwr that will need him to complete an statement of financial position. Sent same to Bwr's home adres [sic] of [WA property].

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<sup>5</sup> The third party bank was the lender of record, with a second bank being the wholesale lender.

22. On 10 March 2009, the FSP made the following file note:

Bwr is employed as a finance manager with a firm of solicitors, However commitments exceed current income. in past has used funds from sale of sub divided block to pay debts, now having to sell assets to clear debts.

23. On 28 April 2009, the consumers sent the following email to the FSP:

It is with absolute regret and frustration that I inform you that the settlement on our investment property that was to occur today at 3pm has now been further delayed by the Buyer – their lender has now reduced their loan amount which now does not provide sufficient funds for them to settle.

...

Given the urgency of this matter we are now desperately looking at our superannuation for mortgage assistance. In order to access these funds via APRA can you please provide a letter with the following items:

Official letterhead from [third party bank];

A statement that a payment is overdue;

A statement that if we fail to pay that amount by a specified date then you will either sell our property or exercise express or statutory power of sale over our home;

The street address of the home held as security on the mortgage (i.e..[the WA property]);

The amount that is equal to three months repayments under the mortgage;

The amount that is equal to 12 months of interest on the outstanding balance of the loan at the time the statement is made;

The name, BSB and account number of your mortgage account...

24. On 8 May 2009, the FSP received the consumers' completed statement of financial position.
25. On 20 May 2009, the FSP declined the consumers' request for hardship assistance and their proposal to clear the arrears.
26. On 16 July 2009, the consumers made a lump sum repayment of \$70,007.94 towards their loan. The consumers have indicated that this payment was made using the early release of Mr D's superannuation.
27. On 29 September 2009, the consumers requested an indicative payout figure from the FSP, as they had sold the WA property. The FSP provided this to the consumers on 30 September 2009.
28. On 8 December 2009, the consumers repaid their loan in full using the proceeds from the sale of the WA property. Upon discharge of their loan, the consumers paid a DEF of \$9,000.

### **Consumers' claims**

29. The consumers' claims and submissions have been detailed in a number of emails to both the FSP and COSL.
30. In summary, the consumers' claims are that:
- (a) the loan they entered into with the FSP was unjust, because:
    - (i) the FSP and/or the MBC knowingly included false information about Mr D's income in the loan application form;
    - (ii) Mr D was not self-employed at the time of the loan application, but was in fact unemployed; and
    - (iii) the consumers could not afford, or could only afford, the loan by selling off their other assets; and

- (b) the DEF charged by the FSP is excessive, as the consumers paid a number of fees at the time the loan settled, including:
  - (i) an application fee of \$499;
  - (ii) a valuation fee of \$1,435.01; and
  - (iii) a processing fee of \$65.

### **FSP's position**

31. The FSP's position is also set out in a number of emails sent to the consumers and to COSL and is summarised as follows:
- (a) prior to the loan that is the subject of this complaint, the consumers had held up to five loans with the FSP since 2006 and had a large investment portfolio;
  - (b) the consumers willingly entered into the loan agreement, fully understanding that they were undertaking significant legal and financial obligations;
  - (c) Mr D is a chartered accountant and, in 2009, was employed as a finance manager at a well known law firm, indicating that he is a person with strong financial acumen;
  - (d) under the FSP's lending guidelines in force at the time of the consumers' loan application, the FSP only required a DOFP signed by the borrowers as evidence of serviceability; and
  - (e) the DEF charged was fair and reasonable, and the consumers entered into the loan agreement fully aware of the DEF scale as disclosed in the loan agreement.

### **Considerations the Ombudsman is required to have regard to**

32. In making this Determination, I have had regard to:
- (a) relevant legal requirements and rights provided by law to consumers;
  - (b) applicable codes of practice;
  - (c) good industry practice in the financial services industry; and
  - (d) fairness in all the circumstances.<sup>6</sup>
33. Both parties have had the opportunity to provide information in support of their respective positions. I am satisfied that, with the exception of any information considered to be confidential and/or commercially sensitive,<sup>7</sup> all information relevant to this complaint received from the FSP and the consumers has been exchanged between the parties.

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<sup>6</sup> COSL Rule 12.1 – Eighth Edition. Please note that any reference to the COSL Rules in this Determination is a reference to the Eighth Edition Rules.

<sup>7</sup> COSL Rule 33.2.

## Findings and reasons for decision

### Claims about the loan application form not made out

34. The consumers claim that, in their loan application, the MBC falsely stated that Mr D was self-employed and earning an annual gross income of \$625,000, when in fact he was unemployed.<sup>8</sup>
35. The consumers have provided no information to support their claim that this income figure was false and have not provided any information about their actual financial situation at the time of the loan application.
36. Without this information, I am unable to make a finding in respect of the loan application form. However, even if Mr D's income was overstated by the MBC, I would be unable to attribute this knowledge and conduct to the FSP, as there does not appear to have been any relationship of agent and principal between the MBC and the FSP,<sup>9</sup> and there is no other information available to suggest that the FSP was or ought to be held responsible for the MBC's conduct.

### The loan is not an unjust contract

37. As the consumers' loan was provided for a personal purpose (to purchase an owner-occupied property in which to live), I consider that it is regulated by the National Credit Code (**NCC**).<sup>10</sup>
38. Under the NCC, a court can reopen a transaction that gave rise to a credit contract if the court is satisfied that, in the circumstances relating to the credit contract at the time it was entered into, the contract was unjust.<sup>11</sup>
39. When considering whether a credit contract is unjust,<sup>12</sup> the court is to have regard to the public interest and to all the circumstances of the case, and may have regard to certain matters which are set out in the NCC including:<sup>13</sup>
  - (a) whether or not the debtor was reasonably able to protect his or her own interests;<sup>14</sup>
  - (b) the extent to which the provisions of the contract and their legal and practical effect were accurately explained to the debtor, and whether or not the debtor understood those provisions and their effect;<sup>15</sup>
  - (c) whether, at the time the contract was entered into, the credit provider knew, or could have ascertained by reasonable inquiry at the time, that the debtor could not pay in accordance with its terms or not without substantial hardship;<sup>16</sup> and

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<sup>8</sup> I acknowledge that the consumers claim that the MBC and/or the FSP falsely stated their income. However, it appears that the MBC completed the loan application form, not the FSP. I have therefore proceeded with my review on this basis.

<sup>9</sup> Generally speaking, at law, a mortgage broker is considered to be an agent of the borrower, not the lender: *Custom Credit Corporation Ltd v Lynch* [1993] 2 VR 469 and *Octapon Pty Ltd v Esanda Finance Corporation Ltd*, unreported; SC of NSW (Cole J); 3 February 1989. Therefore, in the absence of an agency relationship, any knowledge or conduct of the broker cannot be legally attributed to the lender.

<sup>10</sup> NCC section 5(1); UCCC, section 6(1). From 1 July 2010, the UCCC was replaced by the NCC.

<sup>11</sup> NCC, section 76(1).

<sup>12</sup> The meaning of which includes unconscionable, harsh, or oppressive: NCC, section 76(8).

<sup>13</sup> NCC, section 76(2).

<sup>14</sup> NCC, section 76(2)(f).

<sup>15</sup> NCC, section 76(2)(i).

<sup>16</sup> NCC, section 76(2)(l).

(d) any other relevant factor.<sup>17</sup>

40. In considering whether a contract is unjust, no single factor referred to above is, by itself, determinative. Further, the law considers that there is a public interest in holding people to contracts which they freely enter into.<sup>18</sup>
41. However, persons who are not able to reasonably protect their own interests should be safeguarded from the consequences of unjust contracts; in fact, the courts have repeatedly emphasised that the recognition that one party was not able to protect their own interests is central to a finding that a contract is unjust.<sup>19</sup>

*The consumers were reasonably able to protect their own interests*

42. At the time of entering the loan agreement, the consumers were 40 and 42 years of age. They were also the owners of six other properties, some of which were mortgaged to other financial institutions. Accordingly, the consumers had prior experience with similar financial transactions (i.e. mortgage lending). Mr D was also a qualified accountant at the time the consumers entered into the loan with the FSP, which suggests to me that he was reasonably knowledgeable about financial matters and able to calculate whether he and his wife could afford a loan.
43. Based on their substantial prior experience in borrowing money and purchasing property, as well as Mr D's own financial background, I find that the consumers were persons who were reasonably able to protect their own interests in relation to the FSP's loan contract.<sup>20</sup>
44. On balance, and in the absence of any information to the contrary, I consider that the consumers would have been able to read and properly understand the various documents on which their signatures appear, such as the loan application form and the loan agreement. In particular, I consider that the consumers would have been able to understand the declarations they were making in the DOFPs,<sup>21</sup> including the declaration that they had sought financial and other such advice they considered appropriate.
45. In my view, these matters favour a conclusion that the consumers were able to make informed decisions and judge for themselves as to whether they should enter into the loan.

*The consumers were aware of the legal and practical implications of the contract*

46. The consumers were aware of their obligation to make monthly repayments towards their loan and understood the consequences of default; whilst taking place after the loan had been obtained, the consumers' various telephone and written communications with the FSP are a clear indication of this (see paragraphs 21 and 23).
47. Based on the above, I believe that the consumers were aware of the provisions of the loan agreement, as well as their legal and practical effect.<sup>22</sup>

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<sup>17</sup> NCC, section 76(2)(p). The courts have consistently considered the lender's failure to comply with its relevant lending guidelines as a relevant factor: *Perpetual Trustees Co Ltd v Khoshaba* [2006] NSWCA 41; *Tonto Home Loans Australia Pty Ltd v Tavares* [2011] NSWCA; *Violet Home Loans Pty Ltd v Schmidt & Anor* [2013] VSCA 56.

<sup>18</sup> *Provident Capital Ltd v Naumovski* [2013] NSWSC 40.

<sup>19</sup> *Provident Capital v Papa* [2013] NSWCA 36, per Allsop P at [7], cited with approval in *Bendigo and Adelaide Bank Ltd v Karamihos* [2014] NSWCA 17 at [31].

<sup>20</sup> NCC, section 76(2)(f).

<sup>21</sup> NCC, section 76(2)(i).

<sup>22</sup> NCC, section 76(2)(i).

48. Further, the consequences of compliance, or non-compliance, with the provisions of the loan agreement were not substantially adverse to the consumers;<sup>23</sup> non-compliance with the payment terms of the loan agreement would, at its worst, lead to the FSP exercising its rights to recover its debt through the sale of the consumers' new home. However, the consumers were the owners of six other properties and would have been able to realise these assets to repay the loan.

*The consumers have not shown that they could not repay the loan*

49. COSL asked the consumers to provide information in support of their claim that Mr D was unemployed at the time of the loan application;<sup>24</sup> in particular, full details of their actual financial position at that time, including details of:
- (a) their assets;
  - (b) their income; and
  - (c) their expenditure,
- along with supporting documents, such as copies of their pay slips, bank account statements, rent receipts and/or Centrelink statements.
50. The consumers have not provided the above information to COSL.
51. Accordingly, I am unable to conclude that, at the time of entry into the loan, the consumers were not able to meet their repayments without substantial hardship.<sup>25</sup>
52. I also note that the consumers appear to have held a significant investment property portfolio which they could have utilised to repay the loan to the FSP.<sup>26</sup>
53. For the first two years of the loan, the consumers largely maintained their monthly repayments; this does not indicate the consumers could not afford the repayments under the loan at the time it was entered into.
54. The consumers have stated on different occasions that:
- (a) they were only able to make their repayments through the steady sale of all their investment properties;<sup>27</sup> and,
  - (b) they made their repayments using four separate lines of credit, which were provided by the FSP at the same time as their loan.<sup>28</sup>
55. Again, the consumers have not provided any information in support of either of the above claims. According to the account statements for the consumers' loan, the consumers' monthly repayments were made via a transfer from a separate account.
56. There is not enough information to allow me to conclude that that source of the consumers' alleged financial hardship was attributable to their loan with the FSP.

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<sup>23</sup> NCC, section 76(2)(a).

<sup>24</sup> Per COSL's email to the consumers dated 18 August 2014.

<sup>25</sup> NCC, section 76(2)(l).

<sup>26</sup> The courts have indicated that substantial hardship is to be determined on the basis of a borrower's full financial position, and is not determined by looking at a borrower's income alone. Therefore, a consumer that is "asset rich" but in receipt of a low income is unlikely to establish that they would experience substantial hardship in repaying a loan: *Silberman v Citigroup* [2011] VSC 514.

<sup>27</sup> Per the consumers' response dated 4 March 2014.

<sup>28</sup> Per the consumers' response dated 27 August 2014.

*The FSP complied with its lending guidelines*

57. The relevant lending guidelines<sup>29</sup> used by the FSP in assessing the consumers' loan application specified that, in relation to a low doc loan application, the following acceptance criteria applied:
- (a) acceptable applicant types included self-employed and operating in the same business for a minimum of two years;
  - (b) the loan must be supported by a first registered mortgage over a residential property;
  - (c) the maximum low doc exposure to any one applicant was \$1.5 million;
  - (d) a formal valuation was required; and
  - (e) supporting documentation to accompany a low doc application included the following:
    - (i) copies of the most recent six months' loan statements (for all low doc applications that involved refinancing of existing loans); and
    - (ii) a declaration from the applicant stating, among other things, that the applicant had carried out his/her own financial analysis and was satisfied that he/she was able to service the repayments.
58. The lending guidelines also provided that low doc products should only be made available to applicants who had:
- (a) no current or past default listing;
  - (b) no judgment, writ or summons; and
  - (c) no bankruptcy order (current or discharged).
59. In approving this loan for the consumers, the FSP followed its lending guidelines as:
- (a) the loan application stated that consumers were appropriate applicants (as Mr D declared that he had been self-employed for seven years);
  - (b) the loan was secured by a registered mortgage over the WA property;
  - (c) the loan amount was \$1,500,000;
  - (d) a formal valuation was obtained (see paragraph 12);
  - (e) signed DOFPs were obtained from the consumers;
  - (f) according to the FSP's file notes, the FSP performed a credit report analysis with the Credit Reference Agency of Australia (**CRAA**); and
  - (g) the FSP completed a "Loan Serviceability Assessment", which indicated that the consumers could afford to repay a loan of \$1,500,000 from their stated income (see paragraph 14).

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<sup>29</sup> A copy of the guidelines has not been provided to the consumers as the FSP has cited this document as being confidential and/or commercially sensitive (COSL Rule 33.2).

60. Consequently, I consider that the FSP complied with its lending guidelines in assessing the consumers' loan application, and no other issues arose which would have placed the FSP on notice as to the consumers' ability to repay the loan.

*Public interest not served in reopening loan transaction*

61. Having regard to all the matters set out above, I do not consider that the public interest would be served in reopening the consumers' loan agreement with the FSP because, at the time they entered into it:
- (a) the consumers were not vulnerable and were able to reasonably protect their own interests by virtue of their qualifications and previous experience in similar financial transactions;
  - (b) due to the level of their previous experience, the consumers would have been able to understand the terms and conditions of the loan and its associated mortgage;
  - (c) the consumers declared in the DOFPs that they obtained independent legal or other expert advice in relation to the loan agreement;
  - (d) the consequences of compliance and non-compliance with the loan agreement were not substantially adverse to the consumers given their particular financial circumstances;
  - (e) the consumers appear to have met the monthly repayments under their loan agreement for the first two years of the loan term without substantial hardship; and
  - (f) the circumstances do not indicate that "something more" existed that would make the loan agreement unjust.<sup>30</sup>
62. The consumers have claimed that, as a result of this loan, they have no more property assets left. However, they have not provided information to verify that they sold off their six other properties as a result of entering into this loan, or that they in fact lost any money on these investments; further, the consumers repaid this loan following the sale of the WA property, and it is not clear whether the consumers simply moved into one of their other properties. I am therefore unable to conclude that the consumers were unable to repay the loan at the time it was entered into, or could only do so by experiencing substantial hardship.
63. In view of this, I do not consider that the consumers' loan agreement with the FSP was an unjust contract.<sup>31</sup>

The DEF was properly disclosed and is not unconscionable

64. Under the COSL Rules, I cannot consider a complaint that relates to a fee if that fee has been properly disclosed in the loan agreement and is not otherwise unconscionable.<sup>32</sup>
65. The settlement date of the loan was 17 April 2007 and the consumers did not pay the establishment fee on that date.

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<sup>30</sup> *Provident Capital Ltd v Naumovski* [2013] NSWSC 40, at paragraph [302].

<sup>31</sup> COSL Rule 36.1(d).

<sup>32</sup> COSL Rule 10.1(d).

66. The consumers sold the WA property and, accordingly, discharged their loan on 8 December 2009 (i.e. in the third year of the loan term). At that time, the consumers paid a DEF equal to 0.6% of the total amount of credit advanced to them under the loan agreement (or \$9,000).
67. Page four of the consumers' loan agreement disclosed that, if the consumers did not pay the establishment fee on the settlement date, the establishment fee would be waived unless, during the first four years of the loan term:
  - (a) the whole of the loan was repaid for any reason; or
  - (b) part of the loan was repaid at the same time as a release of some or all of the security properties for the loan.
68. DEFs were intended to allow a lender to progressively recoup the amount of an establishment fee over the first three of four years of a loan in circumstances where the borrower elected not to pay the establishment fee up-front at the time of settlement. In the present case, the DEF was scaled over a period of four years. The consumers' loan agreement states that the DEF was scaled from 1% in the first year to 0.4% in the fourth year.
69. By including this information about the DEF term in the loan agreement, I find that the FSP complied with its disclosure obligations.
70. A fee may nonetheless be unconscionable under section 78 of the NCC if it is not equal to the FSP's reasonable costs arising from the early termination or prepayment of the loan, including the FSP's reasonable administration costs in respect of the termination or prepayment.<sup>33</sup>
71. Establishment costs that may be recovered under section 78 can include third party costs, such as commissions paid to brokers (if recovered from the borrower through the DEF), as well as the FSP's operating costs.
72. The FSP has provided COSL with its breakdown of the establishment costs in relation to the loan.<sup>34</sup> Based on this breakdown, it appears that the majority of the establishment cost comprised a commission of \$9,750 paid to the MBC for introducing the loan.<sup>35</sup>
73. The FSP has verified that it paid this amount to the MBC by providing a copy of its commission report.<sup>36</sup> I have reviewed this document and I am satisfied that it verifies the commission paid by the FSP to the MBC; in fact, the report details that the commission paid to the MBC was \$11,550, of which only \$9,750 was passed on to the consumers.
74. As well as the commission paid to the MBC, the FSP's establishment costs also included its overheads (including operation, staff and compliance costs) of \$3,000.
75. The overhead costs of \$3,000 were not inclusive of the fees charged to the consumers upon settlement of their loan, being the application fee, valuation fee and processing fee; these fees are generally associated with the loan application process, and are not costs involved in setting up a loan once the application has been approved.

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<sup>33</sup> NCC, section 78(4).

<sup>34</sup> This breakdown has been cited by the FSP as confidential; I have therefore not attached the breakdown for the purposes of this Determination (COSL Rule 33.2).

<sup>35</sup> This understanding was confirmed by the FSP as correct in its response to COSL dated 29 September 2014.

<sup>36</sup> Such an invoice is considered to be commercially sensitive; I have therefore not attached the report for the purposes of this Determination (COSL Rule 33.2).

76. Therefore, the FSP's total establishment costs amounted to \$12,750, which the FSP was entitled to recover through a DEF.
77. In view of this, I do not consider that the DEF charged by the FSP was unconscionable.<sup>37</sup>

**Finding**

78. I find that:
- (a) the loan agreement the consumers entered into with the FSP was not an unjust contract; and
  - (b) the DEF was disclosed, correctly calculated and was not otherwise unconscionable or in breach of the law.
79. I am therefore satisfied that the complaint has not been made out.



**Raj Venga**  
Credit Ombudsman

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<sup>37</sup> COSL Rules 10.1(d) and 36.1(d).