



**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
BUSINESS LIST (ChD)**

**B E T W E E N :**

**MR & MRS TPW UGLOW**

**(a firm)**

Claimant

**and**

**(1) CLYDESDALE BANK PLC**

**(2) NATIONAL AUSTRALIA BANK LIMITED**

**(a company incorporated in Australia)**

Defendants

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**SHORT-FORM POINTS OF CLAIM**

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**Introduction**

1. Defined terms used in these short-form Points of Claim are as defined in the Master Particulars of Claim (“**MPOC**”).
2. These short-form Points of Claim supplement the MPOC. The MPOC state the basis for:
  - 2.1. the Claimant’s claims against the Bank and NAB arising out of the Statements;
  - 2.2. the allegations that the Statements were false;



- 2.3. the allegations of deceit, negligence, breach of contract, misrepresentation and unjust enrichment made against the Bank and/or NAB.

## **Part A The background to the TBLs**

### **The Claimant**

3. The Claimant is a partnership which carries on dairy farming activities in Cornwall.
4. At all material times:
- 4.1. The partners of the Claimant were, and are, Robert Percy Uglow (“**RPU**”) and his parents, Thomas and Valerie Uglow.
- 4.2. The Claimant banked with the Bank’s Exeter Agribusiness branch based at Kensington Court, Pynes Hill (“**Branch**”).
- 4.3. RPU and the Claimant’s accountant, Mike Feneley of Haines Watts Chartered Accountants, represented the Claimant in its dealings with the Bank and NAB.

### **2010 TBLs**

5. In late 2009, the Claimant wanted to raise finance in order to purchase a farm (“**Stone Farm**”) for £2.5 million, develop its business and clear its existing borrowings with National Westminster Bank of c.£600,000 (“**Existing Borrowings**”). Nigel Martin, the Claimant’s Relationship Manager at the Branch (“**NM**”), suggested that the Claimant enter into TBLs for this purpose.
6. On about 11 December 2009, NM sent the Claimant outline terms and conditions for a total of £4.165 million of funding which stated that:

#### **Tailored Business loan No 1**

- 6.1. £500,000 would be provided on a fixed or variable basis in order to restructure the Existing Borrowings (including early repayment charges).
- 6.2. If this lending was on a fixed rate basis the interest rate would be “*2.00%+ Cost of Funds (fixed/hedged rates)*”.



6.3. *“The Tailored Business Loan will incorporate an interest rate hedging product, the details of which will be advised by our Treasury Solutions representative”.*

**Tailored Business loan No 2**

6.4. £3,500,000 would be provided on a fixed or variable basis in order to purchase Stone Farm and establish a new dairy enterprise.

6.5. If this lending was on a fixed rate basis the interest rate would be “2.00%+Cost of Funds (fixed/hedged rates)”.

6.6. *“The Tailored Business Loan will incorporate an interest rate hedging product, the details of which will be advised by our Treasury Solutions representative”.*

7. RPU believes that the Fixed Rates referred to in paragraph 8 below were described by the NAB Employee concerned as a market rate when those rates were agreed.

8. On about 2 March 2010, the Claimant and the Bank entered into 5 TBLs totalling just over £4 million, including the following 2 FRLs:

8.1. A £550,000 20 year TBL with a Fixed Rate of 5.04% for 5 years (TBLIFX38577) (“**TBL 1**”).

8.2. A £1.5 million 20 year TBL with a Fixed Rate of 5.04% for 5 years (TBLIFX38626) (“**TBL 2**”).

(together, the “**TBLs**”)

9. The Claimant’s copies of the 2010 TBL Facility Letters have been lost. The Claimant made a Subject Access Request to the Bank for all documents and correspondence relating to the TBLs in 2017/ early 2018, but has had no response.

10. As far as RPU recalls, the Claimant was not provided with the Standard Terms at any time.



### **Break Cost Statements in 2013-2015**

11. In 2013, RPU told the Bank that it wanted to refinance the TBLs in order to take advantage of prevailing market rates which were much lower than the Fixed Rate of 5.04%.
12. In an email to RPU and Mr Feneley dated 15 October 2013, NM stated that there was no “*rule of thumb*” to work out what the break costs may be at any stage and that the indicative break costs figures were then:
  - 12.1. TBL 1: £17,700.
  - 12.2. TBL 2: £52,101.
13. The Claimant was very surprised by these Alleged Break Costs and could not afford to refinance either TBL 1 or TBL 2 in October 2013.
14. In 2014, the Bank ceased to be involved in agricultural business in the South West and, while the Claimant’s accounts remained with the Branch, the Claimant was given a new manager, Andrew Farmer, who was based in Glasgow (“**AF**”).
15. By an email dated 12 September 2014, AF set out proposals for new funding for the Claimant, which included a £1,975,000 loan fixed for 3 years at “2% *over the cost of funds*”. The email stated that “*The cost of funds as of today are 1.68%*”. In fact, the 3 year swap rate was then c.1.57%.
16. In late 2014, the Claimant told AF that it still hoped to refinance the TBLs and requested the updated break costs. By an email dated 29 September 2014, AF stated that the indicative break costs were then:
  - 16.1. TBL 1: £7,120.
  - 16.2. TBL 2: £21,359.
17. On 12 February 2015, following a further request from the Claimant for the updated break costs, AF stated that the break costs were then £3,710, being:



- 17.1. TBL 1: £930.
- 17.2. TBL 2: £2,780.
18. The Claimant was able to refinance the TBLs with Lloyds Bank on this date and paid the Bank the Alleged Break Costs of £3,710.
19. Since the refinancing with Lloyds, the Claimant has been able to grow its business by investing £1,473,000 in an additional 210 acres of land and developing a further dairy unit at a cost of £550,000.

**Part B1: The Break Costs Statements**

20. Paragraphs 12 and 16-17 above are repeated:
- 20.1. On 15 October 2013, the Bank (NM) stated that the Alleged Break Costs were £69,801.
- 20.2. On 29 September 2014, the Bank (AF) stated that the Alleged Break Costs were £28,479.
- 20.3. On 12 February 2015, the Bank (AF) stated that the Alleged Break Costs were £3,710.
- In each case, the Alleged Break Cost is likely to have been provided to the Bank Employee (NM and AF) by a NAB Employee.

21. For the reasons pleaded in paragraphs 17-20 of the MPOC, the Break Costs Statements were false.

**Part C1: Reliance (Break Costs)**

22. In reliance on the false Break Costs Statements, the Claimant:
- 22.1. decided not to terminate the TBLs on 15 October 2013 and continued to make Fixed Rate payments to the Bank under the TBLs from then until 12 February 2015;



- 22.2. paid the Alleged Break Costs of £3,710 to the Bank on 12 February 2015.
23. If it had not been for the false Break Cost Statement made on 15 October 2013, the Claimant would have refinanced the TBLs by entering into a variable rate loan with the same margin (over LIBOR) and the same remaining term as the TBLs.

**Part D1 Claimant's claims (Break Costs)**

24. For the reasons stated in paragraph 22 of the MPOC, the Bank and NAB are liable to the Claimant in deceit for the false Break Cost Statements. On the basis there stated, the Bank and NAB:
- 24.1. made the Break Cost Statements to the Claimant, and/or authorised the making of the Break Cost Statements and/or permitted them to be made and/or did not intervene to prevent them being made;
- 24.2. knew that the Break Costs Statements were untrue, and/or did not honestly believe them to be true and/or were reckless as to their truth;
- 24.3. knew and intended that the Claimant would act on the false Break Cost Statements, by deciding either to maintain its payments under the TBLs or to pay the Alleged Break Cost.
25. For the reasons set out in paragraphs 23-24 of the MPOC, the Bank and NAB are liable to the Claimant in tort (negligent misstatement) for the false Break Cost Statements. On the basis there stated:
- 25.1. The Bank and NAB owed the Claimant a duty to use reasonable care and skill when providing information to the Claimant (as described in paragraphs 12 and 16-17 above) about the amount of the Break Cost payable.



- 25.2. In making false Break Cost Statements (by NAB and AF, who are likely to have been provided with that information by NAB Employees) to the Claimant, and/or (by the senior Bank Employees referred to in paragraph 22.7 of the MPOC and by the NAB Employees referred to in paragraph 22.11 of the MPOC) causing or permitting such statements to be made or failing to prevent them being made, the Bank and NAB acted negligently and in breach of the duty of care owed by the Bank and NAB to the Claimant.
26. For the reasons stated in paragraphs 26-27 of the MPOC, the Claimant is entitled to claim £3,710 as a mistaken payment. The Bank and/or NAB has been unjustly enriched by that payment.
27. For the reasons stated in paragraphs 28-31 of the MPOC, the Bank is liable to the Claimant for breach of the implied term of the TBL. The Bank acted in breach of the implied term on each occasion when it quoted or charged the Claimant the Alleged Break Cost.

**Part E1 Loss (Break Costs)**

28. The Claimant's loss arising from its reliance on the false Break Costs Statement and/or as a result of breach of the implied term is:
- 28.1. the difference between interest paid by the Claimant at the Fixed Rate under the TBLs and the interest the Claimant would have paid under a variable rate (LIBOR) loan from 15 October 2013 to 12 February 2015 (£67,919);
- 28.2. the Alleged Break Cost paid by the Claimant (£3,710);
- 28.3. consequential losses (to be assessed) suffered as a result of the Claimant being unable to develop the business (as described in paragraph 19 above) for a period of 2 years.



29. The Claimant is entitled to claim, and will claim, interest pursuant to s.35A of the Senior Courts Act 1981.

**Part B2: The Fixed Rate Statements**

30. Paragraphs 6.2, 6.5 and 7 above are repeated. The Bank and NAB represented to the Claimant that the Fixed Rate was a market rate, not set by the Bank:
- 30.1. NM described the Fixed Rate as the Bank's "*cost of funds*"
- 30.2. The outline terms and conditions would have been prepared by, or with the assistance of, a NAB Employee.
- 30.3. The Claimant believes the Fixed Rate was described as a market rate by the NAB Employee with whom this rate was agreed.
31. The Bank/NAB's Fixed Rate Statements prior to the Claimant's entry into the TBL are further evidenced by the way the Fixed Rate was described after the Claimant's entry into the TBL. Paragraph 15 above is repeated:
- 31.1. By describing the proposed margin as being above the "*cost of funds*", the Bank represented that the Fixed Rate was the Bank's cost of funds without any additional income for the Bank.
- 31.2. By quoting a "*cost of funds*" "*as of today*" which overstated the Market Rate by 11 basis points, the Bank represented that the rate quoted did not include any income for the Bank, when in fact it did.
32. For the reasons pleaded in paragraph 39 of the MPOC, the Fixed Rate Statements were false.
33. The hidden basis points on the TBLs amounted to £3,335 (in the case of TBL 1) and £9,096 (in the case of TBL 2), which was additional hidden income for the Bank/NAB.



**Part C2: Reliance (Fixed Rate)**

34. In reliance on the false Fixed Rate Statements, the Claimant:
- 34.1. entered into the TBLs at an inflated Fixed Rate of 5.04% which included the undisclosed basis points and made Fixed Rate payments under the TBLs until 12 February 2015;
- 34.2. paid the Alleged Break Costs of £3,710 to the Bank on 12 February 2015 (which were higher than the Alleged Break Costs the Claimant would have paid if the Fixed Rate had been the Market Rate).
35. In each case, if the Claimant had known that the Fixed Rate was not a market rate and included additional hidden basis points, it would not have entered into the TBL on the terms that it did and would have sought to negotiate the Fixed Rate down to the proper Market Rate.

**Part D2 Claimant's claims (Fixed Rate)**

36. For the reasons stated in paragraph 41 of the MPOC, the Bank and NAB (on the basis of paragraph 30.2 above) are liable to the Claimant in deceit for the false Fixed Rate Statements. On the basis there stated, the Bank and NAB:
- 36.1. knew that the Fixed Rate Statements were untrue, and/or did not honestly believe them to be true and/or were reckless as to their truth;
- 36.2. knew and intended that the Claimant would act on the false Fixed Rate Statements, by deciding to enter into the FRL on the terms that it did.
37. For the reasons stated in paragraphs 42-44 of the MPOC, the Bank and NAB are liable to the Claimant in tort (negligent misstatement) or under section 2(1) of the Misrepresentation Act 1967 for the false Fixed Rate Statements. On the basis there stated:



- 37.1. The Bank and NAB owed the Claimant a duty to use reasonable care and skill when providing information to the Claimant (as described in paragraphs 6.2 - 6.5 and 7 above) about the Fixed Rate;
- 37.2. In making false Fixed Rate Statements to the Claimant (by NM and the NAB Employees referred to in paragraphs 30.2 and 30.3 above), the Bank and NAB acted negligently and in breach of the duty of care owed by the Bank and NAB to the Claimant.
- 37.3. The Bank (acting by NM and the NAB Employees referred to in paragraph 30.2 and 30.3 above as agents of the Bank) did not have reasonable grounds to believe that the Fixed Rate Statements were true.

**Part E2 Loss (Fixed Rate)**

38. The Claimant's loss arising from its reliance on the false Fixed Rate Statement is all the loss arising from its entry into TBLs, comprised of:
  - 38.1. the difference between the interest paid by the Claimant at the Fixed Rate under the TBLs and the interest the Claimant would have paid under a variable rate (LIBOR) loan with the same profile from inception of the TBLs (2 March 2010) to 12 February 2015 (£250,095);
  - 38.2. the Alleged Break Cost paid by the Claimant (£3,710).
39. Alternatively, the Claimant's loss arising from its reliance on the false Fixed Rate Statement is the AV of £3,335 (in the case of TBL 1) and £9,096 (in the case of TBL 2) on the basis that the Claimant would have otherwise entered into these TBLs on the same terms but at the proper Market Rate as at 2 March 2010 of (in each case) 2.9%
40. Further, the Claimant will claim the losses referred to in paragraph 28.3 above as consequential losses arising from its entry into the TBLs.



41. The Claimant is entitled to claim, and will claim, interest pursuant to s.5A of the Senior Courts Act 1981.
42. Paragraph 9 above is repeated. The Client may amend these Points of Claim on receipt of the Facility Letters and other documents and correspondence relating to the 5 TBLs which the Claimant entered into on 2 March 2010.
43. The Claimant reserves the right to bring a separate application against the Bank under section 140B(2)(a) of the Consumer Credit Act 1974 on the basis that the relationship between the Claimant and the Defendant arising out of the TBLs is unfair to the Claimant, including by reason of the hidden income or margin referred to in paragraph 33 above.

**AND the Claimant claims against the Defendants**

***In relation to the Break Costs Statements***

- (1) Damages as pleaded above on the basis of deceit or negligent misstatement; alternatively (as against the Bank only) on the basis of breach of contract;
- (2) £3,710, as money paid by mistake and/or as money by which the Bank and/or NAB has been unjustly enriched;

***In relation to the Fixed Rate Statements***

- (3) Damages as pleaded above on the basis of deceit or negligent misstatement or under the Misrepresentation Act 1967;

**And**

- (4) Interest on the sums claimed as set out in paragraphs 29 and 41 above.

**Andrew Onslow QC**

**Lisa Jacob**

**STATEMENT OF TRUTH**



The Claimant believes that the facts stated in these Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

Full name: **Mr Garbhan Colla Oisin Shanks**

Signed:

Position or office held at Michelmores LLP: **Partner**

Date: **1 May 2019**