



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

John Glare
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Dear Mr Glare

3 September 2014

EMBEDDED DERIVATIVES IN FIXED RATE LOANS

Thank you for your email of 21 July following our meeting on embedded derivatives in fixed rate loans.

I apologise for having to leave our meeting early, but I am grateful to you for your time and your ongoing efforts on behalf of your members. I was sorry to hear of the difficulties you and your members have encountered.

In your letter you state that the Financial Conduct Authority (FCA) should review the sale of fixed rate loans with mark to market break costs. That is, fixed rate loans where the cost to exit the loan (the 'break cost') is calculated against the prevailing interest rate at the time the loan is terminated.

I am afraid to say this is not possible as the FCA does not have regulatory powers over business loans. Even if the Government were to bring in legislation to change this, this would only apply to future sales as the Government does not legislate retrospectively.

Where small businesses have complaints about sales of fixed rate loans, there is a clear route for them to pursue that complaint and, where appropriate, seek redress. In the first instance this should be through their bank's customer complaints department. This is a route that has been taken by a number of small businesses.

As the FCA confirmed in its appearance before the Treasury Select Committee, its rules require the banks to properly investigate all complaints and, through ongoing supervision, it continues to monitor the banks' complaint handling processes. Any customer that feels it was mis-sold a fixed rate loan should therefore contact their bank to request a review and, if appropriate, seek redress.

With regard to National Australia Bank, as you are aware Clydesdale and Yorkshire Banks have now set up an internal review of all fixed rate Tailored Business Loans (TBLs), where customers make, or have made, a complaint. This is being guided by adjudications from the Financial Ombudsman Service (FOS) and experience from the FCA review. I understand that my officials offered to look into a number of detailed points relating to this review. I will address these in turn.

First, you stated that not all your members were aware of the review and asked whether businesses should contact the bank in the first instance in order to take part.

I can confirm that customers that have previously complained about the sale of their fixed rate TBL will automatically have their complaint re-assessed. Any customers who feel they were mis-sold a fixed rate loan but who have not submitted a complaint can do so through the normal complaints handling process. Customers who have already complained do not need to take any further action. My officials have also offered to establish a point of contact for your members at the bank. My office will provide these details alongside this letter.

I understand that one of your members also asked whether consequential loss claims would be capped at £150,000. I can confirm that settlement payments are not capped at £150,000. If there is sufficient evidence to uphold the complaint the Bank will make a settlement offer on which it adds an additional payment of 8% delayed interest to reflect loss of opportunity, as per the FCA review into mis-selling of IRHPs. In specific and exceptional circumstances it will consider consequential loss claims on top of this, drawing on guidance from recent FOS decisions.

Finally, one attendee asked whether insolvent businesses could take part in the review. I can confirm that there is no bar on insolvent businesses seeking to have their complaint reviewed.

I understand from your letter that you may not wish to engage with this review. I also understand that at the meeting with officials members of your group asked about the appropriate recourse for customers of other banks. If that is the case, I would reiterate that businesses with a turnover of less than €2 million and fewer than 10 employees still have the option to apply to have a further review conducted by the FOS. This would also apply to customers of banks other than NAB.

The FOS provides a free, independent dispute resolution service for bank customers and has in place a dedicated team looking into this issue. The FOS can be contacted by phone on 0800 023 4567, by email at complaint.info@financial-ombudsman.org.uk, or by post at:

The Financial Ombudsman Service
Exchange Tower
London
E14 9SR

In some cases I understand that the FOS has already provided your members with a ruling, with which you disagree.

The independence of the FOS and the FCA is vital to the roles they provide as a safety net for consumers with complaints against financial services firms. The FOS does not represent any particular interest group and is neither a consumer champion nor an industry trade-body. Under section 228 of the Financial Services and Markets Act 2000, the FOS is required to determine a complaint by reference to what is, in their opinion, fair and reasonable in all the circumstances of the case. Its credibility, authority and value to consumers would be undermined if it were possible for the Government to intervene in their decision-making.

If however your members are dissatisfied with the service provided by the FOS, they may wish to make a formal complaint directly to the FOS by writing to them at the following address:

The Service Review Manager
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR

Or email: srmanager@financial-ombudsman.org.uk. If they remain dissatisfied with the FOS' response, they may then wish to contact the Independent Assessor at the following address:

The Independent Assessor
PO Box 35738
London
E14 9YU

More details on the FOS's complaints procedure are available on their website: http://www.financial-ombudsman.org.uk/faq/answers/complaints_a12.html

You also asked for a meeting with the FCA to discuss, among other things, its legal analysis of this issue. My officials have confirmed that the relevant team

would be very happy to meet to discuss. Again, my office will provide contact details alongside this letter.

I am sorry to reply with what you may feel is a disappointing response, but I hope it is helpful to understand the Government's position on this issue. I would reiterate that there is a clear route for your members to seek redress if they feel they were mis-sold a fixed rate loan, and I would urge them to do so.

Best wishes

Andrea Leadsom

ANDREA LEADSOM