

Andrea Leadsom 15 July 14

Good afternoon Andrea.

I'm John Glare. I co ordinate Nab Customer Support Group.

This is Phil Thomas, a farmer from Devon, a member of our group. Phil had an embedded swap in a fixed rate loan with Triodos Bank. Phil stopped making payments to the bank 6 months ago and after failed Mediation, is now forced to sell his farm.

This is Russell, a farmer from West Dorset, a member of our group. Russell had an embedded swap in a fixed rate loan with Clydesdale Bank. Russell was evicted from his farm, his herd of cattle and farm machinery sold at auction. Russell was made homeless and now faces bankruptcy.

I owned a country estate in West Dorset. I had an embedded swap in a fixed rate loan also with Clydesdale Bank. I was evicted from my estate in 2010. 33 full time staff lost their jobs and the estate remains closed to this day. I was bankrupted in 2011, discharged in 2012 and I am now in the High Court.

Phil.....

Thank you for providing this opportunity to meet you for this discussion.

When the FCA announced the results of its inquiry into the mis-selling of IRHPs it said that 90% of these had been mis-sold; mostly on the basis of poor disclosure of break costs.

Our products are IRHPs. This is not an opinion but a fact. Most of us already had money borrowed. In effect, our contracts were changed so that the interest paid was "fixed" for the term of the contract. We did this to reduce risk - to hedge against rate rises. And this was what we thought that we were doing.

But it turned out that the banks presentation of these products as risk reduction products was a mis-representation. If rates were to fall, as was predicted and known by the banks at the time (but concealed from the us) huge new dangers appeared. But we were not told of these.

These dangers were not even risks in the way that most people understand the term risk. These dangers were certainties. Even if rates did not fall, the dangers of these deceitful contracts

actually manifested immediately as a contingent liability. These dangers could immediately cause huge problems - of a scale that could destroy businesses. But we were not told of this.

These products were pre-loaded in the banks' favour. We have not seen a case where these products were genuinely suitable. The small business had to carry all the consequences of the hidden dangers. But these products were hugely profitable, indeed "super profitable", for the banks. We have evidence that some banks actually reduced the quality of the information that they gave to customers apparently to increase product take up and so ensure that these super profits could continue to be booked.

The FCA know all of this. The FCA say that, from a customers point of view, these products have the same dangers as regulated products. But BECAUSE the dangers were hidden inside a contract presented as "simple and straightforward - similar to a High St mortgage" - then the FCA will not act. The FCA have even said that it has some evidence that this was deliberate. But it will not act.

The FCA say that these products should be regulated. That these products will be treated as regulated from now on. MIFID 2 also says that they will be regulated.

But at this point the FCA's stance moves from unjustifiable to bizarre. The FCA say that acting on previous mis-sales would create "Regulatory Uncertainty" that would somehow act against consumers interests.

In reality the deceptions made about these products are deceptions for financial gain. These are almost certainly actual crimes. But the FCA say prosecuting crimes that have occurred "in the past" is not in societies' interests. In doing this the FCA are sending out some very clear messages.

To the banks the FCA is saying "cheat, bend the rules, find loopholes. You can profit from this and IF we catch you we MAY stop you. But we will not fine you and we will let you keep the profits that you have made.

To small businesses, the FCA is saying "The FCA favours an approach that encourages poor behaviour and will not help you. If you trusted your bank, and this trust turns out to mis-placed, then you are on your own - even if your bank has also deceived you that the product is one that is regulated by the FCA."

This is indeed "Regulatory Certainty" but of the worst kind - it is a "Cheats' Charter". It discriminates against banks that try to meet their Regulatory Responsibilities. I don't need to go into detail to say that this will not inspire confidence from small business. If the Government want SMEs to help it meet its objectives of a healthy and dynamic

entrepreneurial economy this really is not the way to do it.

So the FCA claims that it cannot act, despite the fact that by not doing so the FCA fails to do the job it is mandated to do.

Worse, however, is that this refusal to act is without reasonable foundation. Our FOI request on this appears to show that the FCA have never discussed its stance, internally or otherwise. There are no minutes, there is no legal opinion, internal or external. There is nothing written that shows that the FCA view has ever been subject to any sort of scrutiny whatsoever. Due process has simply not been done, even in such a serious case as this.

After many requests, we have been given reference to some sources - but these sources, at best, cast doubt on the FCA stance. At the very least, these sources say "this is not clearcut. There is room for doubt. This needs discussion". But really, realistically, these sources probably say the opposite to what the FCA claim.

That the FCA should act is not disputed even by the FCA. And a strong case that it could act comes from the very sources that the FCA quotes in its unconvincing attempts to justify holding the opposite view. But will the FCA allow discussion? The only response to our reasoned arguments are irrelevant standard form letters. So who holds the FCA to account?

The TSC have tried. The APPG on mis-selling have tried. Plenty of evidence was given to the "Parliamentary Commission on Changing Banking for Good". But still the FCA will not even engage in discussion. Nor will the FCA answer properly to Parliament.

How about the "Regulators Regulator"? The FSCC?

A new head, Sir Anthony Townsend, has just been appointed. Commenting on our challenge appears to have been his first report in his new job. But his comments hardly meet the hopes of the Deputy Governor of the Bank of England. Commenting on Sir Anthony's appointment, Andrew Bailey said "Independent challenge and scrutiny is crucially important for the health of the regulatory system". It appears that Sir Anthony did not read that part of his job description.

Instead his "response" is at best an unconvincing defence of the status quo. More realistically, it is unarguable proof that the system does not work. The Regulator has failed and so has the Regulator's Regulator. We are told that we must take the FCA to court if we want it to re-examine its position. And as a quite extraordinary conclusion, we are also told that the FSCC can claim exception from the FOI act in order to protect its decision from scrutiny.

Is the FCA mandated to prevent market failure? Mandated to help safeguard consumer interests? Mandated to ensure that the regulations create a competitive environment that favours consumer interests? If this is indeed the FCA mandate then we can only answer Fail. Fail. Fail.

That the FCA should act is not in doubt. That the FCA could act is, at the very least, a topic for robust discussion. That the FCA will not have this discussion supports a view that the FCA is acting like the banks it is meant to regulate - certainly it is acting in the interests of the bad banks and not the good ones.

That the faults exist is beyond reasonable doubt. When we became committed to the product that has ended up destroying us we were told very clearly by our bank that we could depend on the FCA if the bank has done something wrong. We could not. The FCA told us that we can depend on the FOS. We could not.

Now we are told that legal action is the only way forward - but lawyers tell us that we need something between £150,000 to £ a million or more to go down this route. If we had access to that sort of money we probably wouldn't be here. Our businesses have been crippled as a result of the banks' bad behaviour. To now tell us that we can only expect justice if we can afford to pay for justice is actually quite obscene. The government must get properly behind small business and show that it is properly behind small business. In return, small business will not only be grateful; it will demonstrate this by creating jobs and by growing the economy. If the government genuinely supports small business then small business will show this by giving its support to both this government and to its objectives.

As you know, there are some incredibly hard working and dedicated MPs that are doing everything they can to break down what can politely be described as the wall of incompetence that exists within the FCA. But the FCA appears to claim immunity from this sort of scrutiny.

This is not efficient - a strong economy needs the financial advantage of effective regulation .The people charged with the provision of this regulation must be properly accountable. That they are apparently not even accountable to Parliament is a travesty.

So how can we move forward?

Russell.....

Russell Gambier - Submission to Andrea Leadsom M. P.

I started farming as an assistant dairyman, and worked my way up over the years until the opportunity came to take on a tenancy on a dairy farm. Dairy farming is a sector which requires high capital investment. I was not unusual in requiring banking support to expand the herd and infrastructure of the business in order to maximise the profitability of the farm. Clydesdale Bank were keen to expand their customer base, particularly in the South where Clydesdale and Yorkshire had no presence and offered funding.

Having already invested £300,000 from the sale of our house, together with bank loans and hire purchase agreements, I was able to establish a profitable business, posting 6 years of profits. I planned to ensure all loans were paid before the end of the tenancy in 2021. At that point my wife and I would be free to sell up and retire, or continue in an overseeing manner while our son took over.

I have already made a submission to the TSC which is attached for your convenience, and I wanted to take this opportunity to underline to you why I have not complained to the bank or FOS, or taken legal action against Clydesdale Bank, and why I need your intervention.

After the forced sale of my farm I was left homeless, jobless and penniless. Clydesdale Bank still hold a personal guarantee over me for £200,000. So far they have not taken any action to recover this by making me bankrupt. I have kept my other personal guarantee creditors at bay by keeping them fully informed of the actions of Clydesdale and fully disclosing my personal circumstances.

I have consulted with Vedanta, QA Legal and Insolvency Assist who all say they believe there is a good case for redress through the courts. The problem is, of course, that I have no money and no entitlement to legal aid as the TBLs were made to the company rather than to me. Even if I bought the right to take action from the administrators I have no money to pursue the claim. This is something that would not be lost on Clydesdale as they know full well that I, and many others in a similar position, have no access to the funds needed to bring them to court.

The appointed Administrators – Mazars – do have a responsibility to pursue this claim of mis-selling against Clydesdale but, as the company has no money, they are not going to take any action being risk averse. They also have a conflict of interests being routinely used by Clydesdale. I have considered going bankrupt to force the issue, but was advised by the pre-bankruptcy department of the Official Receivers that the OR would not pursue the claim through the courts because the OR would have to fund the case. If I pursued the case through the FOS there is a ceiling award of £150,000. The sum owing to the bank and other secured creditors is over £480,000. The consequential loss my wife and I have suffered is in the region of £3,000,000, although a forensic accountant would be needed to present the claim.

You may consider me simple and naïve, but all I wanted to do was to get on with looking after my animals and farm, and I trusted the relationship I had with the bank similar to the way I trust my doctor. This TBL product was not designed to benefit me but them. I accepted their offer to roll up my existing loans along with new capital to further expand the business. In fact I was not given an option of retaining my existing loans but they all had to be captured in the new TBLs.

How can I ever get justice when there is limit to the amount of redress through the FOS. If Abu Hamza can get legal aid why, as an ordinary hard-working husband and father, can't I? All I want is justice and to rebuild my shattered life.

I hope you can help me and many others in this position.

Russell Gambier

15th July 2014

John

If a company employee has a fixed annual salary, adopting a fixed rate on their domestic mortgage is prudent because their salary is fixed. If interest rates rise, their net position is in equilibrium.

However, the turnover of a business can be affected by economic conditions. If there is an economic downturn, a turnover could contract dramatically. One of the reasons we have an interest rate system is to allow the Bank of England to adjust the base rate in order to reflect prevailing economic conditions. If a business adopts a fixed rate, it is prevented from benefiting from this mechanism.

In conclusion, a long term fixed rate for a business does not reduce risk. It actually creates risk. If a business customer was "risk averse" or "wanted certainty", then the customer desired to achieve "certainty" that the net profit of the business was constant, not that the interest expense was constant. The certainty of the interest expense would not assist certainty of the net profit if turnover was contracting in an economic downturn. In fact, the certainty of the interest expense would precipitate contracting profits and financial difficulties. Banks have never traditionally offered long term fixed rates to small businesses simply because they would in effect be "time bombs" waiting to detonate.

National Australia Bank

National Australia Bank discovered how to post enormous profits by embedding swaps in fixed rate loans. The commissions earned by NabCapital were instant and were in the region of 5.5% of the amount of the loan. NabCapital staff were being rewarded handsomely in return for locking customers into long term fixed rates. Only those staff involved with the mis selling and the command chain above received the remuneration, from the treasury rep right up to the CEO of the bank at that time, Lynne Peacock, who left the bank when the CRE portfolio collapsed and was transferred to the parent company's books. Lynne Peacock is now a non executive director at three organisations, Standard Life, Nationwide Building Society and Scottish Water. Lynne needs to be questioned as the mis selling happened under her supervision and approval.

The commissions were earned by Nab Capital. Clydesdale charged a margin of typically 2% of the loan per annum. From this 2%, Clydesdale had to meet its variable costs in administering the loans. Clydesdale's gross profit from issuing the loans was far less than the 2% margin. Perhaps only half a percent, or even less than this.

So, an instant commission of 5.5% earned by NabCapital was of much greater interest to NAB than the measly quarter of a percent earned by Clydesdale. This is evidenced by NAB's decision to exit the UK. NAB was only interested in short term gain and not in receiving acceptable remuneration from the building up of a long term "relationship based" portfolio.

Due to the enormous profits to the bank and the rewards being paid to the staff of NabCapital, there were no controls over mis selling. The reason for the collapse of the Clydesdale portfolio was not the poor performance of the UK economy but as a direct result of the mis selling of Tailored Business Loans.

Some banks did not participate, simply because the management knew that it was wrong and was not prepared to risk the consequences. Other banks dabbled in it by offering moderate incentives to the staff. NAB rolled the mis selling out on a big scale offering substantial rewards to the staff, effectively locking the whole portfolio into long term fixed rates.

Such were the rewards, that money was being lent to any business that wanted to borrow and that owned a valuable asset which offered security, whether the owner had a reliable income stream or not. A long term fixed rate with a markets calculated break cost is akin to a ticking time bomb which would detonate the next time rates drop. At the time of the mis selling market rates were predicted to fall.

In conclusion, all banks are now looking at how the government responds to this issue. If you let the banks off, it will clear the road ahead for a new wave of mis selling on a much bigger scale. This could cause the banking sector to collapse. The banks have tested the water and are now waiting to see what the government is going to do. The government must intervene immediately in order to set a precedent and send the message that regulatory evasion will not be tolerated.

The unfair selling of standalone swaps is wrong. But the embedding of swaps into fixed rate loans, knowing that the customer is unaware, is deceit. If there was an intent to bypass regulation, then this must be even more wrong.

Nab Customer Support Group

Nab Customer Support Group consists of 115 genuine victims of mainly National Australia Bank. Every member has scanned a copy of their facility letter and driving licence in order to prove that they are genuine. Our group was first to attract the interest of John Thurso who later tabled our Early Day Motion which is now supported by 87 MPs. A few days ago, I received confirmation that an ex prime minister has agreed to write a letter of support to Andrew Tyrie. The momentum behind our campaign continues to grow and government intervention now will be much better than in another year's time after thousands of more lives have been ruined.

If the government decides to address this issue, please include our group in future discussions and negotiating as we have played a leading role in bringing this issue into the public domain.

Our group continues to grow in both size and determination to bring the banks to account for the damage that they have caused, extending beyond our members to employees, suppliers and the wider economy.

In summary, this is what we are asking you:

Actions:

Can the Minister ensure that the FCA makes itself both accessible and accountable to the stakeholders whose interests lie at the heart of its remit? This is necessary both now and in the future. Mechanisms must exist that make the FCA fully accountable to its stakeholders.

Can the Minister arrange for us to meet Martin Wheatley and other senior people from the FCA? It seems to us that he is heading an organisation that is not working effectively towards meeting its Statutory Objectives. Can you set up a meeting between us and the FCA? Is so could you attend this with us?

Can the Minister ensure that the reasonable requests for information from the TSC and APPG are complied with in a reasonable way by the FCA? It is wrong that a Statutory body can obstruct Parliament in the way that the FCA are currently doing.

Can the Minister work in co operation with the TSC to set up a process that results in holding to account the banks that evade the regulations for profit? The FCA should be doing this but the list where this has not been done is far too long. The FCA's default position should be appropriate intervention rather than inappropriate evasion.

And finally, the Government, through the FCA, must send out a message that wrongdoing for financial gain is not profitable. The banks **MUST** be held to full account.

More realistically, this is yet another cringeworthy example of the banks' unacceptable behaviour for financial gain. Please act and act decisively to clean up this "legacy issue".

The businesses affected will not rest if you allow for anything less.

Nab Customer Support Group

15th July 2014