

Statement on the case of Mr & Mrs Jim McGrory and “Virgin” CYBG : NAB

**PARLIAMENT HANSARD - Commercial Financial Dispute Resolution Platform 15
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George Kerevan I take my hon. Friend’s point. There are so many individual cases. They cut across all the nations of the United Kingdom and Members of all parties. My plea to the Minister is that we desperately need to find a permanent resolution.

Stephen Gethins (North East Fife) (SNP) My hon. Friend made a good point about encouraging small businesses. It is important that we get a fair deal for small businesses. He will be aware of the case of my constituent, **Mr Jim McGrory**, who was looking to refinance at a preferential rate, but was faced with high exit fees and termination clauses that had not been made clear in the terms and conditions. That is crucial for small businesses, and it was crucial for Mr McGrory.

George Kerevan Indeed. That brings us to the nub of the issue: the imbalance in power between an individual small business and a bank.

Treasury Committee Oral evidence: SME Finance, HC 805 Tuesday 23 Oct 2018

Q374 **Stewart Hosie:** This is where I have some difficulties. I have a case—we have cases, and I have many cases—but it has been adjudicated. The first adjudicator found in favour of the constituent. A subsequent adjudication produced a very detailed and accurate assessment of the case. Another ombudsman, however, appeared and changed the whole basis of that thinking and, I am told, suggested that he would conclude what he concluded and that new evidence would not alter his decision. This has been adjudicated, but in my view and that of many others, it has been adjudicated wrongly.

Simon Walker: Is this by the FOS?

Stewart Hosie: Yes, it is—by the FOS. Where do we go with this? If he happens to fall into the adjudication being around the restructuring in 2016, he will have his case reopened, but because it has been adjudicated, if the timings do not work, it will not be. You are going to have two categories of businesses—one that, finally, may get justice, and another, simply because of the serendipity of timings, that won’t. Would it not be better, if you are going to look at these legacy cases, to take out the caveat about adjudication, unless of course businesses are happy that they got a fair hearing, and to look at them all again?

Simon Walker: I suppose my concern is limits—one has to set them at some point. My concern would also be for the businesses that have settled through existing processes. I think it is unfair to them to allow others to have a second bite of the cherry. I obviously don’t know about your constituent’s case, although I would be happy to take a look at it if that were necessary, but one has to strike a balance between what is actually practical and going ahead. To me, something that reviews cases that have not been assessed—of which there are some going back a long

way, way beyond the current jurisdiction of the FOS, which I think is three years or, in some circumstances, six years—seems a sensible compromise.

Q375 Stewart Hosie: Can I just challenge you there? You said it would be unfair on those who have settled for another case to be reopened, but there is nothing inherently unfair to someone who has settled a case and is happy with the outcome about a case where there is still dispute—adjudication or otherwise—being reopened and reinvestigated. It is a false argument to say that it is unfair to someone who is quite content to look at a case where there may still be a very serious dispute.

Simon Walker: I understand. There are many tragic cases, an awful lot of which I came up against, but I do not think that one should set up an open-ended mechanism. I just do not think that it is practical to set up an open-ended mechanism that re-weighs issues that have been considered. I do not know your constituency case. I completely understand—it may be in that category, but my suggestion is that there should be an arrangement for cases that have had no adjudication, of which there are a number. Otherwise, it gets very difficult to delve into matters that go back beyond a decade. I am not quite clear and do not know the situation, but if your constituency case is from 2016, it is still within the current jurisdiction of the FOS, because it is within a three-year timescale.

FINAL VERSION - 20 DECEMBER 2018

Available for publication with APPG-FBB Tribunal documentation proposals in December 2018

Illustrative example of a case during the last Financial Crisis where the company under the APPG –FBB proposals would have the ability to take their case to a “Financial Services Tribunal” as their claim is for over £25,000 and under £10,000,000.



Summary of the case of Mr and Mrs Jim McCrory (Directors, Matchstart Limited)

by Dr Fiona Sherriff, Director of Communications, APPG on Fair Business Banking

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Background

*BL analysis - Demolition job on FOS adjudicator (2010) and FOS Ombudsman inconsistencies
Break cost rising when even later*

Competence to deal with large claims and consequential damages

His experience re prior fixed loans in any event

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Conclusions

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Supplementary background information / evidence : correspondence

For Completeness – documents disclosure experience to date .etc

A.P1. Email from Clydesdale on 29 March 2010 re Settlement Figure request at 31 March 2010

B.P2.3 **FOS Adjudicator Paul Schaefer** : “Clydesdale Bank is not required to pay compensation to Matchstart Ltd (Matchstart)”

C.P4.4A Clydesdale Bank letter dated 24 February 2012 re Banking Arrangements - overdraft facility not renewing and pressure for repayment proposals by 23 March 2012./repaid by 31 May 2012. Following receipt of this email Mr McCrory made a further complaint to FOS at Doc 4C which NAB acknowledged on 2 May 2012. This was confirmed again in a subsequent exchange of email correspondence on 17 July 2012. At doc 4C on 25 February 2013 Mr McCrory wrote to the FOS to provide additional documentation in support of his complaint and received confirmation on 14 March 2013 that these would be “add to the file for consideration when the complaint is fully investigated. “

D.P5.9 **FOS Adjudicator Soroush Kafiabadi** 18 September 2013 –

“Overall, I am not satisfied that sufficiently clear information was given to Matchstart to enable it to assess the fixing of interest rates under the TBL. I am also not satisfied that break costs were explained in sufficient detail which would have allowed Mr and Mrs McCrory to understand what the potential magnitude of the break costs for early terminaion of the lending agreement may have been. I would therfeore recommend this complaint is upheld.”.....proposed redress was on direct compensation only with no consideration of any consequential damages.

E.P10.26 **FOS Ombudsman Sarah Carter** 19 September 2014 – Provisional Decision

“I do not consider that Clydesdale Bank provided K with any advice about entering into the TBL but I consider that it failed to provide the company with adequate information.”

“The Bank has commented that my reasoning is different from the adjudicator’s. However, the role of the Ombudsman is to make an independent final decision.”

“The bank has indicated in its response to my original provisional decision that in recognition of it having issued the wrong documentation, and to reach a pragmatic solution, it is willing to compensate K on the basis of my decision , i.e. by reconstructing the accounts as if the company had drawn down under its floating rate loan and not under the TBL.

Still in dispute with the company, however, is the calculation of the redress, and recompense for the consequential losses the company says it has suffered.

The company is unhappy that the bank has not paid out the compensation which has been agreed. The bank has said it will make one paymnet in full and final settlement of the complaint. I cannot order the bank to pay any compensation until I issue my final decision.”

“Consequential losses - In relation to consequential loss, K has provided this service with a large number of submissions from its specialist advisors.for the avoidance of doubt, any compensation I award for consequential loss needs to be clearly attributable to the responsibility of the bank. Any other factors which may have affected the company’s financial condition would not form part of my award.

The company’s total consequential loss claim of over £370,000 include losses of some £215,000 which have been suffered by the family shareholders. However, I am only able to consider claims for the company’s losses.”

“From the information I have seen, it looks likely that had it not been for break costs on the fixed rate TBL, which the bank did not properly explain when the company went into the loan, the losses on the sale of the overseas property would not have occurred .

The company was clearly under financial pressure when it sold the overseas property and pressure from the bank as it was struggling to perform under the loan. This is clear from the bank’s records. Break costs payable on the TBL meant that the company could not refinance its debt to achieve a lower rate in order to ease the pressure. I, therefore , consider it not unlikely that break costs did give rise to the company’s reported need to sell the property at a loss.

..... moreIn light of the above I do not propose to make any award for consequential loss.

then another Ombudsman became involved.....

F.P27. FOS Ombudsman Colin Brown 12 February 2016 – Provisional Decision

G.P28.36 **FOS Ombudsman Colin Brown** 28 April 2016 - Final Decision

“In my provisional decision I said I didn’t need to examine the circumstances of the original sale any further. That’s because I’d already come to the view that the TBL had been mis-sold , and that Clydesdale should put K back in the position it would have been in if the company hadn’t had the TBL.

K’s director believes I am avoiding fundamental issues here. He says just tearing up the TBL doesn’t absolve the bank of its actions, because it was the threat of the break costs that brought about K’s consequential losses. In his view, a finding that the contract terms weren’t legitimate would mean the consequential loss claim should be paid in full.

I’ve considered the director’s argument but I don’t agree with it.....

For these reasons , having considered all the arguments and evidence I don’t depart from my provisional decision.....in light of the above , I don’t propose to make any award for consequential losses”

H.P37 . Stephen Gethins letter dated 30 May 2016 to FOS CEO Mrs Caroline Wayman in relation to request to extend deadline for response to Ombudsman’s Colin Brown Final Decision from 31 May 2016 “as there are still unresolved and extenuating circumstances that bear due consideration. “

I.P38 George Kerevan MP letter to Clydesdale Bank dated 6 October 2016 in which he asks
“I would appreciate if you would supply me with the details of the 3rd party hedge who charged the break costs which led to Mr McGrory’s present situation. I understand some of the TBLs were not hedged, they only acted as if they were, so if this is the case with Mr McGrory’s TBL then I request that you provide me with detailed calculations used to reach the figures of each of the break costs you charged Mr McCrory.”

Current status

At this time there continues to be significant argument and exchanges in relation to the Consequential damages of the Claim which continues to be the subject of exchange , now with the Lead Ombudsman Mr David Millington.

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