



DRAFT ONLY

Illustrative example of a case during the last Financial Crisis (Case example 6 of 10) where the company (Moorcroft Estates Limited) was dissolved / insolvent in September 2010 and the individuals subsequently bankrupted in 2014 when there had been known health issues since 2008 etc. which under our proposals the complainants 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.

Statement on the case of Mr and Mrs Hubert Armstrong (former directors) and Danske Bank NI

HANSARD - 10 May 2018 at 1.30 pm Backbench debate by APPG □ Fair Business Banking

- [Jim Shannon \(Strangford\) \(DUP\)](#) - part only

“.....In the time I have available, I shall be speaking about Hubert and Marjorie Armstrong, who have also had a nightmare situation with **Danske Bank** in relation to their property development business, Moorcroft Estates Ltd, which has sites at Glenburn Manor of some 44 units and Fashoda Street in east Belfast, with a plan to build some 47 apartments. On 7 May 2007, Danske advanced the company £1.25 million, which was matched by the business, which had been successfully trading for a decade. Danske subsequently took an additional charge of £300,000 on their family home.

This story is dreadful, and, as happens all too often, it involves health issues. The company was finally insolvent in May 2010. On the preliminary reading, Mr and Mrs Armstrong’s personal efforts to pursue the matter with the FCA are interesting and resonate with much of what I have heard from right hon. and hon. Members in this Chamber today. Mr Armstrong’s is a classic case of where the Financial Ombudsman Service should not be involved now or in the future. It shows why we believe the tribunal is the correct complementary solution, to run alongside the right expanded remit of the FOS. “

A. *Andrew Bailey 7 June 2018 letter (reference SA180523C) Three key Points (one to follow)*

- 1. The conduct of the surveyor who Danske appointed to value the land and an error in his duty of care to advise that the site was “brownfield”.**
- 2. The timing of the bankruptcy as declared by Danske**
- 3. That a site purchased for £2.5m was sold for £67K in December 2014 and then on sold for over £200K a year later.**

Mr Bailey 7 June 2018 Letter Point 1 : “The conduct of the surveyor who Danske appointed to value the land and an error in his duty of care to advise that the site was “brownfield”.

1.1 Property company formed in 2005 following a number of years in partnership /ownership changes - both Mr and Mrs Armstrong in business for 30 / 40 + years

1.2 First project Site known as Glenburn Manor - changed bank from Ulster / RBS to Danske /Northern Bank - repayment pattern combination of £52,000 per house and overdraft facility at 1.5% over Base. The second project – Fashoda Street Valuation provided on instruction of Danske Bank by Chartered Surveyors McClelland Salter as its Senior Partner Tom McClelland was well known in NI / spokesman for RICS on Housing in NI. The Armstrongs never saw that Valuation document for Danske until 21 June 2018.

1.3 In early 2007 as the work on Glenburn was proceeding well and Danske anticipated receiving the final payments for their £52000 per house in that calendar / financial year the Danske Account Manager Mr David Montgomery discussed securing a follow on site given the strong market and challenge in securing building sites and that Hubert Armstrong should engage again with Mr McClelland and see what thoughts he had.

1.4 In early March 2007 Hubert found a potential site at Grove Street East /Fashoda Street , Belfast and asked Mr McClelland if he would look at the site and do a driveby etc. In the meantime he would ask H & R Jess the Architects engaged on the Glenburn Estate site to draw up some plans to see what was viable. The result was that both Mr McClelland and H & R Jess said it should be viable and Mr Montgomery agreed that Danske would back and that Mr Armstrong should try and secure before it went on to auction. Throughout Danske were aware of the discussions by mid March 2007 and Mr Armstrong secured with a deposit after agreement with Mr Montgomery to avoid going on the market with completion targeted within 60 days.... that is 11 May 2007. Mr Montgomery at Danske undertook to get the Facility Letters in place and that McClelland Salter should provide the Valuation.

1.5. On 4 April 2007 Mr Armstrong spoke with Mr Montgomery about the draft plans / houses etc and David Montgomery advised that Mr Armstrong would need to sign a letter to give instructions to McClelland Salter on Danske behalf. Mr Armstrong subsequently signed paperwork to ensure Valuation was in accordance with the Instructions from Danske on 15 April 2007. This Valuation had never been discussed with Mr Armstrong (indeed he did not see until June 2018) and we can now see was a “Red book” valuation that valued the site at £2.5 million.

1.6. No further discussion took place with David Montgomery or Mr McClelland until 10 May 2007 when the Armstrongs received the Danske Facility Letters dated 9 May 2007 and noted that they were solely on an Overdraft basis and that it **contained at Page 4 of 6 a requirement for a “Professional Valuation of the Fashoda Street, Belfast site indicating a value of a minimum of GBP 1,750,000 without Planning Permission.**

1.7 When they received and opened the Facility Letters the next day (10 May 2007) Mr Armstrong immediately phoned Mr Mc Clelland to ask what was going on and for a copy of the Valuation. Mr McClelland advised him that he could NOT provide a copy of the Valuation to him (*this would have been due to the fact that the Valuation was prepared on the instructions of Northern / Danske Bank*

and therefore belonged to the Bank) but that Danske could do so if they wished and that he had no problem if they did. Furthermore that Mr McClelland had received an urgent phone call a few days earlier from Mr Montgomery in which he asked for a NO Planning Permission Valuation and that he had advised David Montgomery at the time to use £1.75m which is presumably why that was in the Bank Facility Letters but that on further reflection he had since updated it to £2.25m for No Planning Permission in a letter which he had just signed and posted earlier that day. Mr Armstrong asked him for a copy of that letter and Mr McClelland agreed and did forward it later that day by email. Copy was in original Document Index and seen by us at our original surgery meeting.

1.8 Mr Armstrong tried to speak to Mr Montgomery later that afternoon and he was unavailable. Later that day Barbara McCalmont, Danske Bank, did speak to Mr Armstrong and told him they needed to sign the Facility Letter paperwork and a Board Minute immediately that day and send it to them to enable the Bank to take security /mortgage charge on and proceed to completion and money in the next day.

1.9 Based on the fact that the Bank was supporting the purchase irrespective of planning permission approvals and the Valuations now by the Danske Valuer the Armstrongs decided they would proceed. Had the Valuation for no Planning Permission and any attendant risks from Danske been lower without doubt they would NOT have proceeded and waited at least a further six months before securing any further property development land. That remains their largest regret.

1.10 The Bank should note that the Security was taken on a 402 Particular of Mortgage or Charge Form by internal Danske Bank solicitors on 10 May 2007 (and not perfected by outside lawyers John Elliot until June 2010) and that at that time the Danske Lending Exposure on 11 May 2007 was some £2.8m – a sum which excluding interest and charges was similar to that when they called in a Personal Guarantee for £300K on 27 June 2010 (which had only been signed on 1 June 2009 at the same time as Danske were demanding a second Charge on their home). Danske had already had a meeting on 1 December 2009 and determined the Company was insolvent – three heavies.

1.11. Further information became available after Mr Bailey's letter above when on advice from Mr Shannon MP Mr Armstrong contacted the valuer directly and received a copy of the Valuation for the first time on 21 June 2018. See Point 2.2

Mr Bailey 7 June 2018 Letter Point 2 : "The timing of the bankruptcy as declared by Danske"

2.1 Totally agree. It is astonishing and a matter of substantive concern that Danske chose to proceed in 2013/2014 with Bankruptcy proceedings against Mr and Mrs Marjorie Armstrong in pursuing (three years after the Company was struck off) a Personal Guarantee for £300K. It is also astonishing that Danske Bank pursued the Armstrongs and not the Chartered Surveyors McClelland salter who held PI Cover of £1m per Claim (page 2 under Compliance of the Valuation Report).

Both Danske and their lawyers knew that Mr Armstrong was still in poor mental and physical health and were staying in friends' accommodation and only recently moved to limited accommodation which they did not own but purchased by their son in law and daughter for them. After the statutory notice was served Mr Marjorie Armstrong wrote to the Banks solicitors on 26 October 2013 and explicitly told them her husband was very unwell and they "had nothing". Indeed in due course the Bankruptcy documentation shows the Insolvency Service was unable to meet its own

costs in the process never mind any creditors and as at present Mr and Mrs Armstrong are mindful that they can't even cover their funeral expenses. Given any review of the evidence from 2005 there were no grounds for this conduct and behaviour by Danske.

2.2 *We have also established since Mr Bailey's letter on 7 June 2018 that the 2007 Valuation for Danske at Page 6 stated*

"2. That we accept that the Bank is relying on the terms of our report for the purpose of evaluating both the customer's proposal and the security value of the property".

"3. That the Bank or receiver or other party appointed by the Bank to realise its security may rely on the terms of our report and that such a duty of care exists in relation to the Bank, its receiver or other such party."

"4. Our understanding that our firm must not disclose either the whole report or extracts thereof to any third party (including the customer), without the prior written consent of the customer.

"5 That if the Bank wishes, it may provide a copy of the report to the customer for reference purposes only".

2.3 Mr McClelland's son Matthew confirmed on 21 June 2018 that no Professional Indemnity Claim was filed or ever threatened by Danske against the firm at any time from May 2007 and was shocked that Danske had made Mr and Mrs Armstrong bankrupt and lost their home. Indeed it is a valid argument that the Bank was negligent in not pursuing a PI claim and shockingly pursued a Personal Guarantee from June 2009 in to bankruptcy proceedings in which they had zero chance of recovering anything. Which of course was the actual outcome in 2014.

Mr Bailey 7 June 2018 Letter Point 3 : "That a site purchased for £2.5m was sold for £67K in December 2014 and then on sold for over £200K a year later."

3.1 That is a matter of public record on the Land Registry records (as per documents index) and since that onsale Houses have been built and completed on the site in 2015/2016 for a site price that was less than 10% of the No Planning and Planning Valuations 7 years earlier.

This sale at £67K represented a discount of 97% to the acquisition price paid by the Armstrongs (considerably more than the general fall in property prices at that time) whilst the sale at over £200K represented a gain of over 300% within a year to the purchaser at £67K.

Further evidential and forensic research in preparing Witness Statements for FST .

4.1 On the original Glenburn Manor site Planning Permission had been sought to build 6 Undercroft Houses and Mr Montgomery supported that position. In late May 2009 Mr Armstrong advised Mr Montgomery that he understood that the planning officer had recommended approval and that it would now be forwarded to the Council. Mr Montgomery then stated that he would fund the development but Mr and Mrs Armstrong would have to sign a Personal Guarantee for £300K and take a second charge on their home.

4.2 Despite Mr Armstrong's health in good faith they signed a Personal Guarantee on 1 June 2009. Planning Permission was received in August 2009 and when they advised Mr Montgomery in

September he was told the bank was no longer prepared to fund the building of those houses. This now seems like a conscious deceit (fraudulent misrepresentation?) of Mr and Mrs Armstrong to provide additional security cover to Danske. After that David Montgomery / Danske action the Armstrongs did not engage with multiple letters re Danske's persistent efforts to legally secure the second charge on their home. Partly as a result of this Mr Armstrong's health deteriorated further and by December 2009 they decided to visit their daughter for an extended period in early 2010 in New Zealand.

4.3 On reviewing the Land Registry the specific land property for the six Undercroft Houses remains in the now dissolved Moorcroft Estates Limited whilst Planning permission was available for the sites (fully serviced) are now under soil. At today's valuation the sites would be worth at least £300K.

We understand that Mr and Mrs Armstrong have been in written communication with Danske Group Board in Denmark since September 2018.

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Background Notes

SAR documentation available (for individuals only) – refused company information – together with significant files from Mr Armstrong.

Letter sent by Mr Armstrong dated 28 June 2018 asking that all documents and oral recording transcripts be set aside for future use at a "Financial Services Tribunal".