



## Fair Business Banking

**Illustrative example of a case at the height of the Financial Crisis in October 2008 (Case Example 3 of 10) which now trade trades as a Limited Company having being sold a £1m Fixed Interest Loan at 6.55% pa by Danske Bank NI in an “embedded swap” to the Partnership which broke same in March 2018 and moved to HSBC in May 2018. Under our proposals they would have the ability to complain at their choice to either the “Ombudsman Service” or the “Financial Services Tribunal” as claim for £420,000 is over £25,000 and under £600,000 proposed thresholds.**

### Statement on the case of Derryduff Farm (Semple Partnership) - Danske Bank NI

**HANSARD:.... RBS GRG and SMEs 18 January 2018 Volume 634 • 2.15 pm**

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

“..... In the short time I have, I want to illustrate my point with the case of a large family dairy farm in Northern Ireland. It took out a £1 million loan with Danske Bank on the day of the highest LIBOR rate, on 1 October 2008, and since the day of £1 million loan drawdown on 22 January 2009, the farm has paid almost £500,000 in capital and—wait till you hear this one—£535,000 in interest, including another £62,000 because it moved to another bank. That bank has really screwed them, if I can use that word. I do not know if it is unparliamentary language and I apologise if it is, but that is how I feel. The Democratic Unionist party is watching how the FOS process handles this mis-selling case.....”

- [The Economic Secretary to the Treasury \(John Glen\)](#) – part only

“..... We heard further powerful testimony from the hon. Member for Strangford (Jim Shannon), who used uncharacteristically strong language—legitimately so.”

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

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

“First, I congratulate the hon. Member for East Lothian (Martin Whitfield) on securing the debate. In my last speech on this matter in this House, I referred to a farm in the constituency of my hon. Friend the Member for East Londonderry (Mr Campbell); the family live in my constituency. I remind the House that they paid back half a million pounds in capital and £535,000 in interest, including £62,000 just to leave the bank they were with and go to another bank. The bank had the audacity to charge £6 for a transfer fee on the £1.25 million balance. **What bank was this? It was the bank I am with—the Danske bank** ..in Northern Ireland, the most profitable company in Northern Ireland, with profits of £117 million in 2016 and of £145 million in 2017. Its chief executive has said: “We are absolutely delighted to have retained top spot in the Belfast Telegraph’s listing of the Top 100 companies in Northern Ireland”. **Would it not have been better had it been in the top 100 for customer care and looking after its customers?** That is what we should have had, instead of it trying to make more dividends for its shareholders. “

POINTS - FACTS to follow - lots to follow from Wesley Witness Statement etc

1. £250,000 Variable Interest Loan and sold £1,000,000 Fixed Loan at height of banking crisis / libor – 1 October 2008. Frequent calls to get decision by Danske Treasury oral transcripts available.

Our Support Team members brought to our attention the telephone transcript on 1 October 2008 (*doc S7.2 BROKER (George X) : I'd have to go and price it on the market but you would be looking 5.10 for 10 year , maybe even 5.05% for the 15 year*” as compared to the money market mid “swap rate” screens of 4.80% for 15 year Tenor and falling in doc 57 which would have been right in front of the Treasury person together with the Danske Bank Research Papers at the time (A2-A6)

2. Partners didn't want to do deal until end December 2008 – outside 90 day offer

Furthermore had Wesley not been continually pressed by Danske to sign up at the height of the financial crisis and bank lending on 30 September (also at Danske quarter end) as supported throughout the phone transcripts including *telephone transcript doc S7-2 : Wesley : Could it be January 2009 or not? etc* and the Partners instead had time to consider properly, AND we conclude that we would consciously select a fixed interest loan in January 2009, the swap rates screens would have shown 3.95% (p2) and not 5.05% quoted by Mr X – see *Document 57 and S7-2*.

3. Break cost not discussed - refused to restructure loan in 2017 and 2018 . Eventually moved to HSBC in May 2018 after paying £62K break cost.

4.

5. Claim 420K etc etc

6. Danske refused to allow FOS to consider evidence as time barred and refused to enable same to permit on a voluntary basis so a “fair and reasonable” approach could be taken.

The Danske Bank NI CEO (SMCR 1) position in his letter dated 5 October 2018 is that

“The matter was referred by Mr Semple to the Financial Ombudsman Service (FOS) and in its final decision it agreed with the Bank that the claim was time barred. The Ombudsman has set out in considerable detail the reasons for his decision.

The limitation periods apply to all financial services firms and their customers. We are obliged to comply with final decisions made by FOS and so it is reasonable for us also to be able to rely on the rules regarding time limits which apply when a complaint is made to FOS. Without prejudice to same, the Bank has reviewed the file in this case and is satisfied the loan was not missold.”

Fiona Sherriff

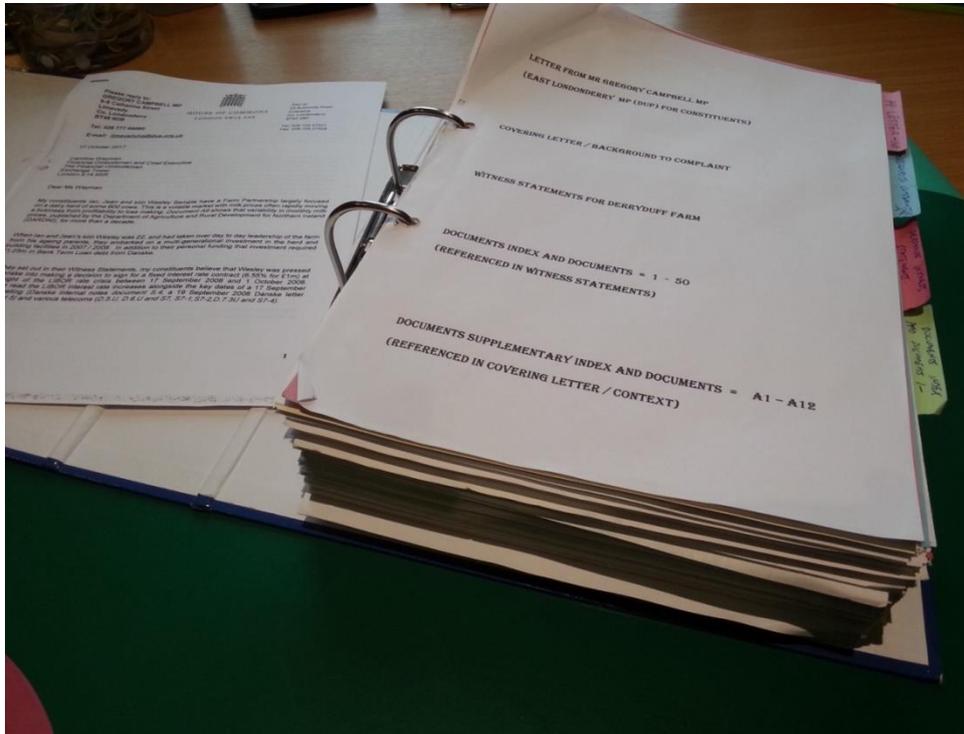
**Director of Communications**

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## Background Notes

A. SAR documentation available (after multiple attempts) and Documents Index together with nine witness statements.



## Ombudsman feedback - which can be published as assisting in other submitting Complaints

*“Our ombudsman thought there was a useful summary of the complaint at the beginning, providing clear background to the complaint. The complaint was set out clearly – the documents were set out in a logical order and the evidence was well-referenced throughout. We scan documents onto our system, so the colour tabs put on individual documents can go astray in that process. For us, it’s probably easier to mark the paper document itself with any referencing number – but that isn’t too much of an issue for us.*

*There was a useful chronology, again with references to the documents provided. The file contained the sort of documents we would expect to see – point of sale documents, witness statements, internal notes and call transcripts, correspondence with the bank.*

*It was helpful to have the XXXXXX balance sheets and evidence to show us the XXXXXX was a small/medium business. That’s information we often need to ask for, so to have it already saves time.*

*Some of the news articles that provided a bit of general background to the mis-selling issues and the House of Commons report probably didn’t need to be included. Our staff are familiar with the general context and background to this type of dispute.”... FOS email 11 May 2018*

While the FCA who had received a duplicate set in October 2017 stated in a letter in August 2018

*“ My second observation is that I concur with the assessment of Mr Little and the Financial Ombudsman Service that the documentation provided by Mr Little and the Semples was detailed and of high quality...”*

**B.1. Within the FCA as the regulator their senior staff didn't know what complaints were eligible or not to the FOS and that was in 2016 and 2017.. .. so it is not unreasonable to consider that they would at least be more informed than the average SME.**

FCA FOI 5699 et al - "Board Paper for Discussion – 7 December 2017 Page 9

The proposals that EXCO approved in December 2016 are more effective in narrowing the existing redress gap than we anticipated at the time. **About 25% more SME disputes are likely to be eligible than previously expected , corresponding to up to 23,000 complaints referred to firms and up to 470 complaints referred to the FOS per year. This reflects the likely volume of complaints by newly eligible SMEs in relation to unregulated lending.** (Figure 1 , pink shaded area).In total up to 1900 additional SME complaints might be referred to the FOS each year, and up to 95,000 complaints referred to firms by newly eligible SMEs will now be subject to complaints handling rules.

3.4 The December proposals will not close the redress gap in relation to high value disputes (due to the FOS award limit) and about 40,000 medium sized enterprises will remain ineligible to take a complaint to FOS. Nevertheless we expect a reduction in harm even for those SMEs through changes to firm conduct and product design. Newly eligible SMEs will have the option to refer complaints to the FOS, and FOS's view of what is fair and reasonable in the circumstances of individual complaints may create precedent over time, which firms might consider in their dealings with SMEs.

Annex 1 -

Para 8 **At the time of the EXCO decision we anticipated that our proposals would only apply to small business complaints about regulated products and services. However, following further discussions with GCD, we now understand that the FOS jurisdiction, specifically in relation to lending, is wider than what we believed at the time of the EXCO decision in December 2016. The FOS can consider complaints about unregulated activities, specifically "lending money" and activities ancillary to this (Figure 1 , pink shaded area); and our complaints handling rules apply to these. For example, the activities of GRG or the sale of loans with characteristics of IRHPs are within jurisdiction, and the FOS has considered such complaints. However, many of the SMEs affected could not have taken their complaints to the FOS because they were larger than the existing FOS eligibility threshold.**

Para 9 In practice the FOS considers many lending-related business complaints to be outside its jurisdiction for reasons other than the size of the business or the products and services they are complaining about. For example, a complaint referred by a former director of a dissolved company, or one in insolvency or administration proceedings , about the treatment of their company will not be eligible. A complaint by a former director about their own treatment in relation to personal guarantees provided for the company loans will also not be eligible. As a result , one third of all lending complaints by businesses are over 2.5 times as likely as lending related complaints by consumers to be out of jurisdiction or to be dismissed by the FOS. This ratio is much higher than for non lending complaints."

**B>2. Extract from FOS ruling - 19 July 2018 (which is inconsistent with FCA Knowledge base and not what was actually happening in practice throughout Banking).**

“I accept that in 2009 there was little if anything in the public domain about the mis-selling of interest rate hedging products and fixed rate business loans. But I don’t think it was necessary for the partners to be aware of any publicity around that issue in order to know that they had cause for a complaint. Their own circumstances and the events described by Mr W Semple meant that they knew, or ought to have known, they had cause for complaint.....

The partners representative says they were busy farmers and didn’t know anything about mis-selling, bank complaint procedures or the ombudsman service. But I can’t say these are exceptional circumstances which would have prevented the partners from complaining to their bank about the problem with the loan. I think the partners could have complained to the bank without understanding the procedures it used to deal with complaints. **And there was no need for the partners to know in advance about the ombudsman service, because the banks final response letter would have told them about this service. That was an obligation on the bank in 2009, as it is today. In 2009 this service was able to accept complaints of this kind.**

The representative says the partners were reluctant to complain to the bank because they felt vulnerable, given the bank’s power as provider of finance. But its not unusual for customers to have mixed feelings when complaining to firms which they rely on for financial services. I don’t regard these as exceptional circumstances.”

**B. 3 whilst in Andrew Bailey’s letter to Jim Shannon MP on 21 November 2017 he records**

Point 9 On improvements to Complaints handling and access to the Ombudsman Service

*“In 2008 the FSA consulted on changes to the rules that cover who can complain to the Ombudsman, making micro enterprises eligible complainants. Between 2010 and 2011, the FSA consulted on a number of further changes to DISP. These included increasing the Ombudsman service’s award limit from £100,000 to its current value of £150,000 and requiring firms to identify a senior individual responsible for complaints handling. The rules came into effect from early 2012, and should result in more meaningful compensation for SMEs with higher-value disputes, where firms might have a lesser incentive to redress informally.*

***In late 2014 we consulted on measures to improve complaints handling by retail financial services firms, including an obligation to notify eligible complainants that they can refer their complaints to the Ombudsman. All of these changes have been in force since June 2016 and should, taken together, result in greater awareness of the ombudsman service among SMEs.***

**B>4 <https://www.moneymarketing.co.uk/fos-to-accept-complaints-from-micro-enterprises/>**

Furthermore whilst we know the definition for eligibility of microenterprises was included from 2008 in FOS it was not until November 2009 that this was extended by EEC legislation to include within its scope the complaint which would have been eligible from Derryduff..see link. In any event Danske did nothing about the remarks at a meeting on 6 April 2016 of the representative and the Head of Agribusiness responded to the minutes

(doc N20/N21) “You will understand that I’m not in agreement with XXXXX in terms of his assertion that the banks made supernormal profits on the loan”. Furthermore when their representative XXXXX made a written supplementary complaint on 30 April 2018 in relation to the break process and cost/fees to Danske they completely ignored it until (we believe) the FCA were involved prior to a meeting between Mr Shannon MP and the FCA CEO Mr Andrew Bailey and team. Subsequent to that intervention Danske began their letter dated 27 July 2018 with “.....**please accept my apologies that issues raised in your correspondence received via email on the 30<sup>th</sup> April 2018 were not addressed.**” Note this was outside Danske scheduled time period for dealing with complaints as set out on their website

“If your complaint is in relation to a payment service within 15 business days (or in exceptional circumstances by the end of 35 business days) and in all other cases, within eight weeks of receiving your complaint we will send you a letter explaining:

- our final response or
- why we cannot provide a final response yet, and when we expect to be able to do this

**House of Commons - Early Day Motion – 16 April 2018**

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Notices of Motions: 16 April 2018

MONDAY

1162

*FINANCIAL CONDUCT AUTHORITY CONSULTATION ON THE FINANCIAL SERVICES INDUSTRY AND SMEs*

16:4:18

Jim Shannon  
David Simpson  
Paul Girvan  
Ian Paisley  
Sir Peter Bottomley  
Gavin Robinson

★ 6



That this House recognises the progress of discussions on the financial services industry involving the Financial Conduct Authority (FCA), HM Treasury and small and medium-sized enterprises; welcomes the current FCA review and launch of the CP18-3 consultation paper following the backbench business debate on RBS Global Restructuring Group held on 18 January 2018; notes with special reference Q4 within the FCA Consultation (CP18-03) which asks about the date of coming into force for changes introducing small businesses as eligible complainants and such changes only applying to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018; further notes that the FCA has the powers and sets the rules on how the Ombudsman should handle complaints further; notes that the jurisdiction of that service is published as part of the FCA's handbook, in the section called Dispute Resolution (DISP) rules: complaints and that DISP 2.8.2 is found within Chapter 2; and asserts that the FCA must add with immediate effect a clause (C) stating that if the complainant brought their complaint to an hon. Member at any time from 1 September 2007 to 21 April 2018 and has a written acknowledgment or some other record of action on the complaint, from that hon. Member during that period; to ensure that the FCA cannot ignore past banking victims.