Statement on the case of Mr Geoff McConville (Opticians) and Danske Bank

PARLIAMENT Planned speech by Mr Gavin Robinson MP on 9 October 2018 at 4.30 - 6.00 pm Backbench debate by APPG □ Fair Business Banking

Unable to deliver speech as attending a Commons Defence Select Committee meeting to 5.52 pm
- **Gavin Robinson (East Belfast) MP - part only**

"I too, congratulate the Hon. Member for Hazel Grove (Mr Wragg) on securing the debate. This debate is about bank fraud. Recently Danske Bank A/S has become almost synonymous in Denmark with money laundering. For the Scandinavian country's biggest bank, the scandal started in Estonia, where Danske has admitted that much of US$235 billion in non-resident flows between 2007 and 2015 can be deemed suspicious. The FCA is now also reported to be investigating here in London.

(Removed detail on case from planned speech……..)

I understand there may also be a former Danske employee as a whistleblower.

Our thinking has moved forward here, since Mr Shannon's Submission to the TSC SME INQUIRY and the FCA Consultation CP18/3 in April 2018, and in light of words of the Banks now, exactly a decade after the UK taxpayer and banking victims "saved" RBS and LLOYDs/HBOS, we think banks should demonstrate their new conduct and behaviour and have a final opportunity to consider the legacy complaints. If settled then fine and if not all the documentation in their defence should be provided to the complainant so it may form part of their defence at an Ombudsman or Financial Services Tribunal as appropriate.

In Mr Shannon's discussions with both the APPG Fair Business Banking secretariat and SME Alliance executives the DUP believe there would be support from those quarters for such a final voluntary scheme – as National Australia Bank did for Embedded IRHP Structured Collar sales at Clydesdale and Yorkshire - and if we take the banks at their word / PR now then why would they not accept a voluntary scheme for legacy complaints from banking victims where they can consider carefully each individual case. As my DUP colleague Mr Sammy Wilson MP has stated we should remember that it is the banking victims and UK taxpayer who are worse off today and saved the UK Banking system a decade ago and some of those Banks are using taxpayers' money to fight these legacy bank cases." End of draft

FINAL VERSION – 3 DECEMBER 2018
Available for publication with APPG-FBB Tribunal documentation proposals in December 2018

Illustrative example of an SME case prior to Financial Crisis in 2008, actually from 2001, which continues to trade today having being sold an IRHP structured collar product by Northern Bank (now Danske Bank NI) and which under APPG FBB proposals would have the ability to complain at their choice to either the "Ombudsman Service" or the "Financial Services Tribunal" as their claim is for over £25,000 and under the "proposed" £600,000 thresholds.

Statement on the case: Mr Geoff McConville and Danske NI (formerly Northern Bank)
by Dr Fiona Sherriff, Director of Communications, APPG on Fair Business Banking

Mr McConville, an optician from Belfast, has suffered for many years as a consequence of a toxic bank loan which was undoubtedly mis-sold to him by Northern Bank.

The type of loan mis-sold to Mr McConville contained an Interest Rate Hedging Product (IRHP) called a structured collar. The consequence of this was that when interest rates fell his repayments increased enormously.

Customers of Clydesdale and Yorkshire Banks who were mis-sold the very same product as Mr McConville have received full redress. Mr McConville has not because Danske Bank (who acquired Northern Bank and therefore Mr McConville's loan) has failed to deal with the situation.

Background

IRHPs are a type of derivative used to manage interest rate risk by professional financial traders. During the 2000's banks across the UK sold them to many thousands of unsophisticated small business customers who did not understand them, because they were very lucrative. Consequently unsuspecting SMEs ended up paying sustained high interest rates in a low-interest environment and suffered badly.

Standalone IRHPs are FCA-regulated products so the FCA was able to set up an IRHP Review in 2013. £2.2 billion redress was paid out to customers and importantly**, customers mis-sold the most complex and damaging 'Category A' IRHPs, structured collars, were all given automatic redress.**

National Australia Bank (NAB) owned Clydesdale, Yorkshire and Northern Banks. All three banks widely sold loans to SMEs and called them Tailored Business Loans (TBLs). These were effectively IRHPs in disguise. Different types if TBLs had different types of IRHPs embedded into the loan contract from vanilla swaps (Category C) to the highly toxic (Category A) structured collars.

In 2014, TBL contracts were investigated by the Treasury Select Committee, who concluded that they had, 'retained the risks and complexities of the regulated product but had none of the safe-guards'. The TSC went as far as to say that NAB, 'created TBLs to avoid requirements imposed by the regulator'.

Customers who had been mis-sold these unregulated products could therefore not participate in the FCA's IRHP Review. However, in recognition of the toxicity of the embedded IRHPs in TBLs, NAB's remaining banks, Clydesdale and Yorkshire, agreed in 2013 to undertake a Voluntary Review of over 2,000 sales of their more complex TBLs, i.e. those which contained embedded caps, collars or

structured collars. Through this scheme most customers received redress and, to my knowledge, all customers who were mis-sold Category A embedded structured collars received full redress.

Danske had taken over Northern Bank many years before NAB's Voluntary Review. Therefore Northern customers like Mr McConville, who had been mis-sold the very same TBL product as Clydesdale and Yorkshire customers, found themselves with no route to redress.

Had Northern Bank still been in NAB's ownership, he would have been able to participate in NAB's Voluntary Review. In this case I have no doubt that he would have received full redress many years ago.

Conclusion

Despite Mr McConville's complaints over many years Danske Bank have refused to accept any responsibility for his predicament. Mr McConville was not at fault when he was mis-sold his TBL; Northern Bank was to blame. It cannot be acceptable that the acquisition of Northern by Danske prevents Mr McConville from accessing the justice he so obviously deserves.

Supplementary background information / evidence : correspondence

Expert Witness statement available and former employee as whistleblower.

The Subject Access Request (SAR) documentation made available by Danske, together with significant files from Mr McConville records, and the remaining documents disclosure should follow

The Position Statement from the All-Party Parliamentary Group on Fair Business Banking dated 14 November 2018 states at Page 4 "*For those cases that are not resolved within this six month timeframe, there will be a duty of disclosure of documentation by the Banks, which will be in accordance with the legal Civil Procedure Rules (CPR) 31, 31A and 31b and certified by the appropriate person under the FCA's Senior Managers and Certification Regime (SM&CR) and the case moves to independent dispute resolution.* " ……or equivalent in their Civil Courts jurisdiction.

Timeline

A> Participating Fixed Rate loan with Structured Collar on 3 December 2001. Regular time periods when repayments difficult to sustain and threat to "calling in the debts" – e.g Ian Barry email to Geoff McConville email dated 8 December 2010.

B> Mr McConville writes to Danske on 29 September 2012 seeking automatic reparation in line with the FCA published process as in his view he had brought a Structured Collar and acknowledge receipt of the complaint on 5 October 2012 with a further letter on 29 October 2012 apologising for the delay and confirming investigations are currently underway with guidance that they should be complete on or before 26th November 2012.

C> To **Solicitors - Dear Sirs,**

Re: Your c l i e n t - M r Geoffrey McConville

Thank you for your letter received on 20"' December 2012
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The Financial Services and Markets Act 2000 (FSMA], created the Financial Services Authority (FSA) and granted it statutory powers to regulate certain activities. These regulated activities are described in Part III of the Financial Services and Markets Act 2000 (Regulated Activities] Order 2 0 0 1 as "Specified Investments," The FSA's power to regulate Specified investments (except funeral plan contracts and regulated mortgage contracts) commenced on 1 " December 2 0 0 1 by virtue of Article 2 of the Financial Services and Markets Act 2000 (Commencement No.7) Order 2 0 0 1 .

Mr McConville did not purchase a Specified Investment. He obtained a loan from the Bank with an interest rate that varied according to the type of facility selected by him. A loan is not a Specified Investment and the provision of a loan is not a regulated activity. The FSA has no statutory power to regulate loans and consequently the loan facility which your client obtained cannot come within the ambit of the FSA Review on Interest Rate Hedging Products.

We would reiterate that we do not uphold your client's complaint and our position remains as per our final response to your client dated 23'"^ November 2012.

Danske Account Manager

D> Mr McConville complaint to Danske on 4 July 2014

Dear Sirs

Geoff McConville
Complaint regarding mis-selling of interest rate hedging product

I wrote to you on 29"' September 2012 to register my complaint in relation to the Bank's refusal to acknowledge that the sale of a Participating Fixed Rate Loan Facility by the Bank to me in 2001 fell within the ambit of the ongoing FCA review of interest rate hedging products. You subsequently failed to uphold my complaint and reiterated the Bank's position in a letter to my legal advisors on 7"' January 2013.

As you will be aware, former National Australia Bank entities such as Clydesdale and Yorkshire Banks have agreed with the FCA to undertake a review of sales of tailored business loans ("TBL") which exhibit comparable features to a Structured Collar. **To date, I note that Danske bank has failed to engage in a similar review.**

On the basis that the Bank has refused to adopt a purposive approach to the scope of the FCA review and notwithstanding the fact that the Bank has determined that the product sold to me is ineligible for review within the scope of the FCA review, I write to complain that such product was nonetheless mis-sold. For the avoidance of doubt, this complaint is not a continuation of my previous complaint and should be treated distinctly for the purposes of your investigation and response.

The Bank has in previous correspondence asserted that I, "obtained a loan from the Bank with an interest rate that varied according to the type of facility selected". On the contrary, it is my assertion that I was sold a product by the Bank which contained an embedded interest rate hedging mechanism, the interest rate of which was variable by reference to the prevailing LIBOR rate from time to time.

The Participating Fixed Rate Loan Facility sold to me by the Bank falls within the FCA definition of a Category A TBL. The FCA has provided clear guidance on Structured Collar products being products which "enable a customer to limit interest rate fluctuations to within a specified rage, but involving arrangements where, if the reference interest rate falls below the bottom of the range, the interest rate payable by the customer may increase above the bottom of the range." The interest rate calculation formula contained in the loan facility letter issued to me and dated 3 December 2001 clearly satisfies these criteria.

You will note that page 2 of a credit memorandum dated 5"' November 2001 states "RMS are to meet with customer to discuss interest rate hedging which may change slightly the above figure but of course the bonus is security against increasing rates".

The summary document dated 20"' November 2001 issued by the Bank's Risk Management Services provides the following simple analysis of the proposed structure "100% of the facility hedged against rising interest rates" … continued

E> Danske letter of response dated 4 August 2014

Dear Mr McConville

I refer to your letter of 4th July 2014 which was received by the Bank on 7™ July 2014. I have now investigated your complaint and have summarised your concerns as follows:

1. You allege that the Participating Fixed Rate Tailored Business Loan ["TBL"] was mis-sold to you. In particular you allege:
• The description of the TBL as a "fixed rate loan" was misleading;
• The dealer gave you a vague description of the TBL and you did not understand how the TBL operated;
• The economic and break costs of the TBL were not explained to you;
• When the fixed interest rate on your TBL was triggered in September 2003 you phoned the Bank to query why this occurred and you maintain that it was only at this stage that the break costs were explained to you.

2. You state that your previous complaint to the Bank [in which you alleged that the TBL fell within the ambit of the FCA review of interest rate hedging products) was not upheld. You state that your letter dated 4'*^ July 2014 is not a continuation of that complaint.

Our records indicate that you signed an Offer Letter for a Participating Fixed Rate Loan Facility and a Loan Master Agreement both dated 28'*" November 2001 . The Offer Letter and Loan Master Agreement were received by the Bank on 30"^ November 2001.

We wish to advise you that we consider any claim alleging that the TBL was mis-sold is statute barred…contd.

F> Mr McConville files complaint received 6 November 2014 by FOS as no progress with FCA etc

G> Initial letter from FOS to Mr McConville dated 11 December 2014

Dear Mr McConville

your complaint about Northern Bank Limited

We wrote to you on 4 December 2014 to let you know that your complaint would be reviewed by an adjudicator. Complaints related to **interest rate hedging products are considered by a specialist team at the ombudsman service.** Your complaint has been passed to this team because the product it relates to appears to have some similar features to a hedging product. This team will now be looking at your complaint.

You may have seen that the regulator has published a review of the sale of interest rate hedging products to small and medium-sized businesses. Details of this can be found on the regulator's website (www.fca.gov.uk). http://www.fca.org.uk/consumers/financial-services-products/banking/interest-rate-hedgingproducts ..contd…

H> Letter from FOS to Danske (by email) dated 27 January 2015

I write concerning this complaint by Mr McConville that has been allocated to me to investigate.

Mr McConville complains about the business loan he obtained from Northern Bank in November 2001. He considers that the loan was mis-sold, because the participating fixed interest rate terms, especially break costs, were not properly explained.

I see your letter dated 19 December 2014 says that you consider this complaint is time barred. Having now looked into Mr McConville's case, I believe this is a complaint we can consider further.

You refer to DISP 2.8.2 that can be found on the Financial Conduct Authority's website explaining our jurisdiction. I have copied below part of that DISP rule.

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response or redress determination; or

(2) more than:

(a) six years after the event complained of; or (if later)
(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint; unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

You consider that Mr McConville has raised his complaint with us too late. He brought the complaint to us in November 2014 and you write that he should have done so within six months of 23 November 2012. I agree that if he was not given another final response letter then his complaint would have been brought to us too late.

But it appears to me that because the bank issued another final response letter on 4 August 2014, Mr McConville was given a further six months from that date to raise his complaint with us. Therefore I consider we can deal with this complaint, because he brought his complaint to us within six months of the final response letter dated 4 August 2014.

You also write that Mr McConville brought the complaint to us more than six years after the event and more than three years after he was aware he had cause to complain. I agree that he brought the complaint to us outside those timescales. But he raised a complaint with Northern Bank in September 2003, as Mr McConville said and the bank confirmed.

The DISP rule 2.8.2 says that the six and three year rules apply unless a complaint is made to the bank within those periods. I consider that as Mr McConville made a complaint to Northern Bank within two years, that is in September 2003, this complaint falls within our jurisdiction.

If you agree with my conclusions, and are prepared to consider Mr McConville's complaint, I would be grateful if you would let me know by 10 February 2015. Please would you also forward any supporting documentation or further evidence that you have not already provided – in respect of the merits of this complaint In particular, a copy of any information given to Mr McConville in 2001 that explains break costs.

However, if you disagree with my conclusions that we can consider the merits of this case, please let me know – also by 10 February 2015 – telling me your reasons, and enclosing any supporting documentation or further evidence that you have not already provided.

Please would you let me know now if you plan to reply fully, but do not think you will be able to meet this deadline.

As a reminder, you will also have the right to ask an ombudsman to review the opinion that the merits of the complaint can be considered. But in most cases, complaints will not need to be escalated to that level, and can be resolved at an earlier stage.
Yours sincerely
XXXXXXXXXXX

J> From XXXXXX Financial Ombudsman Service

Sent: 27 January 2015 15:16
To: 'geoffmcconville@btconnect.com'
Subject: Your complaint about Northern Bank Umited (Our ref: 1631-4238)

Dear Mr McConville

I'm writing to confirm my telephone message left today- and let you know what you can expect from us. My understanding is that your complaint is about the business loan you obtained from Northern Bank in 2001. You complain that the loan was mis-sold, because the terms of the participating fixed interest rate, especially break costs, were not properly explained to you. My role as an adjudicator is to give an independent opinion on your complaint. This means I'll talk to you and the bank, weigh up the facts of what's happened, and then suggest a fairway to resolve the situation .In most cases, we find a solution at this stage. This might be agreeing how the bank should put things right - or sometimes that the bank has already acted in a reasonable way. But if either you or the bank disagree with what I say, we can review your complaint and tell you our final decision. There's more about how we work on our website at www.financial-ombudsman.org.uk/faq/index.htm.

The bank has raised an objection to us dealing with your complaint, saying it is time barred, as it said it would in its letter to you dated 4 August 2014. My initial view is that this complaint is not time barred and I will write to the bank. It has a right of an appeal. I will let you know after I have considered its response.

At this stage, you don't need to do any more. I believe you are happy for me to contact you by email - but let me know if you prefer another method of contact or if there's anything else I can do to help. If you do get in touch, please use the reference 1631-4238/MYK/EI13. My contact details are below.

K> From: XXXXXXX Financial Ombudsman Service

Sent: 24 February 2015 15:21
To: 'geoffmcconville@btconnect.com'
Subject: Your complaint about Northern Bank Limited (Our ref: 16314238)

Dear Mr McConvlle

I'm writing further to our telephone conversation today.

As you know, I wrote to the bank and it has replied. I have copied below my email to the bank (after deleting the name of our contact at the bank) and I have attached the bank's reply. As you can see from my email of 27 January 2015 to the bank, we cannot deal with a complaint if it is brought to us more than six months after the final response letter. You can see the rules I refer to at the following website: http://fshandbook.info/FS/html/FCA/DISP/2/8 about your complaint

Your complaint is about the business loan you obtained from Northern Bank in 2001. You complain that the loan was mis-sold, because the terms of the participating fixed interest rate, especially break costs, were not properly explained to you. You consider that this complaint is different to your complaint in 2012, which was that the sale of the loan should be included in the regulator's review of mis-sold hedging products.

As you can see, I considered that since 2012 you have been basically making the same complaint that the loan was missold. I initially felt that because the bank had written to you on 4 August 2014 giving you another six months to contact us, we could look at your complaint.

However, having now considered the bank's response, I consider that its letter of 4 August 2014 was pointing out that it was relying on the earlier letter of 23 November 2012. The bank's letter of 23 November 2012 said that if you were dissatisfied you can refer the complaint to us within six months of the date of that letter.

I now consider the bank's letter of 23 November 2012 as its final response letter. So you should have brought your complaint to us by 23 May 2013. You brought your complaint to us too late, because we received it in November 2014.

what happens next

If you have any new information that you think means the ombudsman service would look at your complaint, please let me know by 10 March 2015. Once I've considered what you have said, I'll get in touch again to talk about the next steps.

In every case, both you and the bank have the right to ask an ombudsman to make a decision.

Otherwise, you don't need to do anything more. I'm very sorry not to help you any further. But please let me know if you have any questions about what I've said.

Yours sincerely
XXXXXXXXX
adjudicator

L> Mr McConville wrote a six page letter referring to the FCA aspects etc

Your Ref: 16314238
Date: 25 March 2015
Dear XXXXXXXX

Complaint regarding Northern Bank Limited (the "Bank")

I refer to the above matter and your email of 24th February 2015 attaching the Bank's reply to your email of 27th January 2015. As we have subsequently discussed, I have taken further legal advice and now write to set out the grounds on which this matter should indeed be pursued by the FOS…..contd……

M> Ombudsman decision

complaint by: Geoff McConville Opticians
complaint about: Northern Bank Limited
complaint reference: 1631-4238/MYK/EI13
date of decision: 21 May 2015

This decision is issued by me, Colin Brown, an ombudsman with the Financial Ombudsman Service. It sets out my conclusions on whether or not the Financial Ombudsman Service can consider this dispute.

summary of complaint

Mr McConville complains that he was mis-sold a participating fixed-rate loan by Northern Bank Limited.

background to complaint

Mr McConville took out the loan in 2001. He complains that the bank didn't explain the terms properly, especially the costs of ending the agreement early.

In 2012 he asked Northern Bank to review the loan. He thought that it should do that as part of the agreement with the Financial Conduct Authority (FCA) for reviewing interest rate hedging products. The bank declined to review the loan. It said products like Mr McConville's loan weren't covered by the FCA exercise. The letter said it was bank's final response and that if Mr McConville remained unhappy then he could refer his complaint to the Financial Ombudsman Service, if he did so within six months.

In 2014 Mr McConville wrote to the bank complaining that the loan was mis-sold. The bank said it didn't agree. It also believed that the 2014 complaint was an attempt to revive the 2012 complaint. The bank said that it was probably too late to refer the complaint to the Financial Ombudsman Service.

Mr McConville then brought his complaint to this service. Our adjudicator concluded that it was basically the same complaint that he'd made to the bank in 2012. The bank had given its final response in 2012 – so the six months should start from the date of that letter. The adjudicator said the complaint was therefore out of time and we couldn't consider it. Mr McConville doesn't agree with the adjudicator's conclusions. In summary, he makes these points:

 The bank's 2012 letter was confined to the ambit of the FCA review and didn't address the substantive complaint of mis-selling.

 In 2012 the bank didn't comply with the FCA's rules on dispute handling as regards the substantive mis-selling complaint.

 The bank's 2012 letter wasn't its final response in relation to the mis-selling complaint. The 2014 letter, which dealt with the substantive points, was its final response – and he'd brought the complaint to the ombudsman within six months of that letter.

 The bank's responses were unclear, equivocal and contradictory, so there are exceptional circumstances justifying acceptance of the complaint.

my findings

I've considered all the evidence that's been provided. I'm sorry to disappoint Mr McConville but I too have concluded that the complaint has come to us too late. Mr McConville feels that the content of the 2012 letter fell short of what he'd expect to see in it. So he concludes that it didn't count as a final response letter – especially as the bank then made comments about the substantive complaint in its 2014 letter.

I understand Mr McConville's argument, but I don't agree with it. The letter doesn't have to be comprehensive or persuasive in order to count as a final response for the purposes of our time limits. Nor does it have to demonstrate that the firm has complied with all its obligations.

If it's rejecting the complaint, it simply has to give reasons for the rejection, inform the customer about their right to complain to this service (enclosing our leaflet) and explain the six month time limit. The bank's 2012 letter did all these things, so in my view it was a final response to Mr McConville's complaint about the loan.

As Mr McConville was dissatisfied with the letter and the bank's investigation, he could have made that part of his complaint to us, along with the substantive issues about the loan itself. The bank did discuss the substantive

issues in its 2014 letter. But I don't think that changes anything. In the same letter, the bank made clear that the 2012 letter had been its formal final response to the complaint. In any event, I don't think that writing a final response letter means that a bank may never comment on a matter again.

As the final response letter was dated 23 November 2012, Mr McConville needed to refer his complaint to this service by 23 May 2013. He didn't bring it to us until November 2014, so I have to conclude that the complaint is out of time.

We can still consider a complaint if exceptional circumstances made it late. The example given in our rules is where the complainant has been incapacitated. But I'm not aware of anything so serious that prevented Mr McConville from bringing his complaint within the six months. I don't think his criticisms of the bank's letter amount to exceptional circumstances.

my decision

The Financial Ombudsman Service can't look at Geoff McConville Opticians' complaint about the loan because it's outside our time limits.

Colin Brown
Ombudsman

In accordance with the APPG Fair Business Banking statement above, and Mr McConville's solicitors letter dated 15 November 2018 (enclosed with a covering letter on 17 November 2018 from Mr McConville to the Danske CEO Mr Kevin Kingston), **Danske Bank will have until Friday 18 May 2019** to reach an agreed solution with Mr McConville, or alternatively provide all the relevant documents so Mr McConville can decide whether he refers his complaint to the "Ombudsman" or a Financial Services Tribunal case later in May 2019.

Sample Case documentation – Ombudsman or Financial Services Tribunal

3 December 2018