Open Letter #1

Open Letter

David Duffy **30 May 2019**

@davidduffycybg *{Open Letter #1}*

@cybgplc

Dear David

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

Some of these loans have been classified as "**Fixed Rate TBLs**" by ***Clydesdale Bank***.

Representations have been made to the **Financial Ombudsman Service** (**@fincancialombuds**) and Members of Parliament that a "**Fixed Rate TBL**" is a simple **Fixed** *Interest* **Rate Loan** that has no *back-to-back* Interest Rate Swap {*Contract for Difference*} and therefore was not subject to regulation by the **Financial Conduct Authority** (**@TheFCA**).

However, no mention was made that ***Clydesdale Bank*** had made an offer of a **variable rate loan** facility which had been accepted in writing by SME borrowers later classified as having been "*sold*" "**Fixed Rate TBLs**".

You will now have to explain how a legally binding contract for a **variable rate loan** facility was transformed into a simple **Fixed** *Interest* **Rate Loan** after the borrower had executed the **variable rate loan** facility contract and provide this explanation to the **Financial Ombudsman Service**

The **APPG on Fair BusinessBanking** **{@appgbanking}** may also be interested in this explanation.

After borrowers had accepted the offer in writing for a **variable rate loan** facility, a representative of the **National Australia Bank** would phone the borrower to discuss options for interest rate movement protection insurance which was referred to as a "***Hedged Facility***" in the associated ***Terms and Conditions*** document at **Condition 8.1**.

In some cases, the **NAB Treasury Representative** would "*price*" an **Interest Rate Swap** (**IRS**) contract, which once executed with a known counterparty would have converted a **variable rate loan** facility into a **Fixed** *Payment* **Rate Loan** facility**.** However, no counterparties were identified and ***Clydesdale Bank*** has now admitted that no associated **IRS** contracts were ever executed related to specific loans.

This then raises two important questions:

(1) Did the **NAB Treasury Representative** have authority to amend the **variable rate loan** contract negotiated by ***Clydesdale Bank*** commercial loan division; and if so

(2) Can a *Variation to Contract* document be produced that would evidence the offer of a **variable rate loan** facility being withdrawn and replaced by a new offer of a simple **Fixed** *Interest* **Rate Loan facility?**

@CYBG_RemSupGrp

Open Letter #2

Open Letter

David Duffy **31 May 2019**

@davidduffycybg *{Open Letter #2}*

@cybgplc

Dear David

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

Some of these loans have been classified as "**Fixed Rate TBLs**" by ***Clydesdale Bank,*** even though borrowers signed a contract that provided a **variable rate loan** facility.

In **Open Letter #1** two important questions were raised:

(1) Did the **NAB Treasury Representative** have authority to amend the **variable rate loan** contract negotiated by ***Clydesdale Bank*** commercial loan division; and if so

(2) Can a *Variation to Contract* document be produced that would evidence the offer of a **variable rate loan** facility being withdrawn and replaced by a new offer of a simple **Fixed** *Interest* **Rate Loan facility?**

Now assuming that a **variable rate loan** contract was able to be converted to a simple unhedged **Fixed** *Interest* **Rate Loan** contract, this raises another question:

(3) Could borrowers then terminate the purported **Fixed** *Interest* **Rate Loan** contract before maturity and re-finance with another **variable rate loan** facility at a lower interest rate?

That is, could Clydesdale Bank enforce any "***early termination charge***" or so-called "***break cost***"?

Condition 8.5 Variable Rate Break Costs –
Provided a small '*break cost*' for the early termination of a **Variable Rate Loan** Facility.

Conditions 8.1 to 8.4 –
Provided a '*break cost or break gain*' for a "***Hedged Facility***" that is terminated before the agreed maturity date.

No Condition –
Providing a '*break cost*' for the early termination of a simple **Fixed** *Interest* **Rate Loan** Facility.

However, the associated **Terms and Conditions (T&C)** document did not include a condition for the early termination of any simple unhedged **Fixed** *Interest* **Rate Loan** Facility nor prescribe how such a charge would be calculated.

You will now have to explain on what basis ***Clydesdale Bank*** threatened to, and in some cases did impose, massive purported "***break costs***" in the range of 20% to 40% of the loan amount?

@CYBG_RemSupGrp

Open Letter #3

Open Letter

David Duffy **1 June 2019**

@davidduffycybg *{Open Letter #3}*

@cybgplc

Dear David

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

Some of these loans have been classified as "**Fixed Rate TBLs**" by ***Clydesdale Bank,*** even though borrowers signed a contract that provided a **variable rate loan** facility.

Two **FOS** Case Studies are summarised here:

FOS Case Study #1:

Variable Rate Loan Facility Amount: £1,942,000
Offered by: Alison Chambers – **Financial Solutions Centre** {Sth Yorkshire} on 30 Jan 2008
Accepted by borrower on: 7 Feb 2008
Retail Margin to LIBOR: **1.675%**

Purported **Interest Rate Swap** priced by: Michael Cahill – **NAB Treasury Solutions**
Date: 13 Mar 2008 "*Strike Price*" quoted: 5.79%

FOS Case Study #2:

Variable Rate Loan Facility Amount: £3,950,000
Offered by: Ben Thomason – **Financial Solutions Centre** {Oxford} on 13 Feb 2008
Accepted by borrower on: 13 Feb 2008
Retail Margin to LIBOR: **2.25%**

Purported **Interest Rate Swap** priced by: Kevin Horne – **NAB Treasury Solutions**
Date: 14 Mar 2008 "*Strike Price*" quoted: 5.55%

In these case studies a "*Strike Price*" was priced and quoted, however, no counterparties to an **Interest Rate Swap** were identified and by the Bank's own admission no *back-to-back* Interest Rate Swap Contracts were ever executed.

Can you please explain to the **Financial Ombudsman Service (FOS)** why the borrowers in these case studies had amounts substantially more than what was required to pay interest on a **variable rate loan** at the prescribed retail margin to Libor deducted from their loan accounts?

Can you also explain why in the event of the early termination of these loan facilities a "***break cost***" other than that provided by **Condition 8.5** would be imposed or threatened to be imposed?

@CYBG_RemSupGrp

Open Letter #4

Open Letter

David Duffy — **2 June 2019**

@davidduffycybg — *{Open Letter #4}*

@cybgplc

Dear David

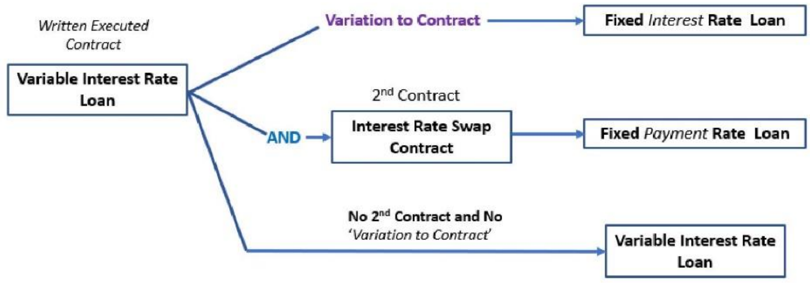
From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

Some of these loans have been classified as "**Fixed Rate TBLs**" by ***Clydesdale Bank,*** even though borrowers signed a contract that provided a **variable rate loan** facility.

This '***Logic Tree Diagram'*** illustrates how ***Clydesdale Bank*** can assist the **Financial Ombudsman Service (FOS)** to finally resolve disputes related to so-called "**Fixed Rate TBLs**":

Logic Tree Diagram

'Tailored Business Loans'



Starting with the execution of the written contract for a **Variable Interest Rate Loan** facility, there are three possible outcomes:

(1) There is a '**Variation to Contract**' that revokes the offer of a **variable interest rate** loan and replaces that previous offer with an offer of a simple **Fixed** *Interest* **Rate Loan**;

(2) A separate 2nd Contract is executed that provides a *bona fide* **Interest Rate Swap** which has the effect of *'fixing'* loan payment obligations when combined with a **variable rate loan** facility {a **Fixed** *Payment* **Rate Loan**};

(3) There is no 2nd contract and no **'Variation to Contract'.**

Outcome (3) is the default outcome. Can you please provide any evidence to the **Financial Ombudsman Service** in support of **Outcomes (1)** or **(2)**?

@CYBG_RemSupGrp

Open Letter #5

Open Letter

David Duffy — **3 June 2019**

@davidduffycybg — *{Open Letter #5}*

@cybgplc

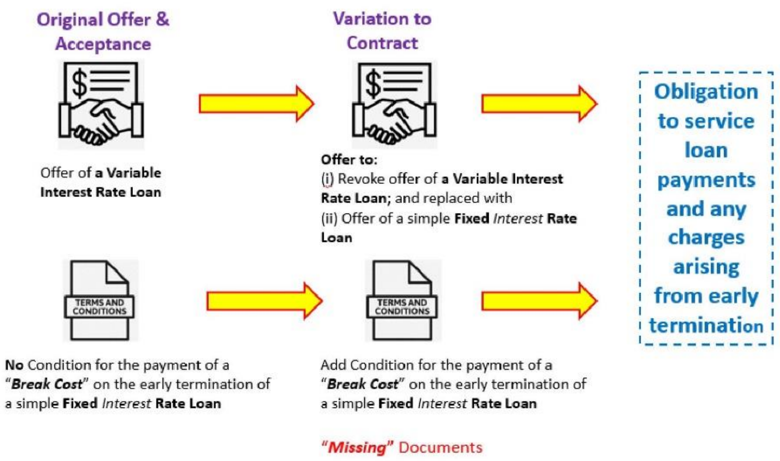
Dear David

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

Some of these loans have been classified as "**Fixed Rate TBLs**" by ***Clydesdale Bank,*** even though borrowers signed a contract that provided a **variable rate loan** facility.

Clydesdale Bank failed to inform the **Financial Ombudsman Service (FOS)** of the existence of executed contracts for a **Variable Rate Loan** facility and so must now produce the documents described as "***missing***" in the following diagram.

Contract Documentation



If these documents can be provided to **FOS** then **@NAB** and **@ClydesdaleBank** will have a defence as to why the Bank was justified in taking much larger sums of money out of SME borrowers' loan accounts than required to service a **variable rate loan** facility and as well as a defence for threatening to impose massive "***break costs***" if these SME borrowers sought to terminate their so-called "**Fixed-Rate TBLs**" and re-finance their loan facilities.

@CYBG_RemSupGrp

Open Letter #6

Open Letter

David Duffy **8 June 2019**

@davidduffycybg *{Open Letter #6}*

@cybgplc

Dear David

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

Some of these loans have been classified as "**Fixed Rate TBLs**" by ***Clydesdale Bank,*** even though borrowers signed a contract that provided a **variable rate loan** facility.

Clydesdale Bank has committed two serious **Acts of Omission** and two serious **Acts of Commission** when responding to requests for information by the **Financial Ombudsman Service (FOS).**

The **Acts of Omission** are:

- **(i)** Concealing the existence of executed contracts for **variable interest rate** loans; and
- **(ii)** Concealing the existence of an offer to act as an ***agent*** to arrange **Interest Rate Protection Insurance (IRPI)** on behalf of the borrowers.

The **Acts of Commission** are:

- (i) Claiming that offers of simple **Fixed** *Interest* **Rate Loans** had been made, which had then been accepted; and
- (ii) Inferring that the ***Terms and Conditions*** document included a provision for "***break cost***" charges for such simple **Fixed** *Interest* **Rate Loans.**

The offer document for a "**Fixed Rate TBL**" did not include the offer of a so-called "***embedded swap***". However, the offer document did include an offer to act on behalf of the borrower to arrange **Interest Rate Protection Insurance (IRPI)**, of a type requested by the borrower.

The offer to act as an ***agent*** was activated <u>after</u> the acceptance of the offer of a **variable interest rate** loan facility when the borrower later made a request to nominated "**Treasury Representative**" for a particular type of **Interest Rate Protection insurance (IRPI).** One of the options was an **Interest Rate Swap (IRS)** contract, which when combined with the contract for the **variable rate loan** facility would "**fix**" the borrower's monthly payment obligations to the lending bank.

The "**Swap Rate**" {**Fixed Rate** leg} was priced by the "**Treasury Representative**" and the pricing details provided to the Borrower in a "**TBL Loan Ticket**", however by the Bank's own admission no *back-to-back* **Interest Rate Swap** contracts were ever completed with an identifiable "**Third Party**".

If you dispute this analysis can, you please advise the **Financial Ombudsman Service (@financialombuds)** accordingly.

@CYBG_RemSupGrp

Open Letter #7

Open Letter

David Duffy **8 June 2019**

@davidduffycybg *{Open Letter #7}*

@cybgplc

Dear David

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

The offer document for a "**Fixed Rate TBL**" did not include the offer of a so-called "***embedded swap***". However, the offer document did include an offer to act on behalf of the borrower to arrange **Interest Rate Protection Insurance (IRPI)**, of a type requested by the borrower.

That is, an offer was made for the "***Treasury Solutions***" division of **National Australia Bank** to act as an ***agent*** for the borrower who had recently accepted an offer for a **Variable Interest Rate** loan from the "***Financial Solutions***" division of ***Clydesdale Bank***.

A formal agency agreement is not required for one party to act as an agent for another.

Acting in the capacity of an ***agent,*** the "***Treasury Representative***" had a duty to execute a <u>second contract</u> to provide an **Interest Rate Protection Insurance (IRPI)** policy with a "***Third Party***" to protect the SME borrower who had recently executed a contract for a **Variable Interest Rate** loan facility at a prescribed margin to **LIBOR**.

The relation between an **Agent** and the agent's **Principal** is one of the established "***fiduciary***" relationships. An **Agent,** as a *fiduciary*, has a duty to account to his **Principal.** Therefore if a *bona fide* **Interest Rate Swap** contract {or any other "***Hedging Arrangement***"} had been executed with a "**Third Party**", then the borrower would have been entitled to know the identity of that "**Third Party**" as well as well as being entitled to a statement of all payments made to or received from that "**Third Party**" who was the "**Floating Rate**" counterparty to the **Interest Rate Swap** Contract.

However, ***Clydesdale Bank*** has admitted that no <u>second contract</u> to provide **Interest Rate Protection Insurance (IRPI)** were ever executed. The nominated "***Treasury Representative***" only *priced* the "**Fixed Rate**" leg of an **Interest Rate Swap** and advised the borrower of the <u>pricing</u>, without then proceeding to execute a binding contract with an identifiable "**Floating Rate**" counterparty.

The "**Fixed Rate**" in a "**Fixed Rate TBL**" is the "**Swap Rate**" for the **Fixed Rate** leg of a purported **Interest Rate Swap** contract that was never executed. Therefore the **Variable Rate Loan** facility remained <u>unhedged</u>, and the borrower's liability was to make interest payments on that loan only.

If you dispute this analysis, can you please advise the **Financial Ombudsman Service (@financialombuds)** accordingly.

@CYBG_RemSupGrp

Open Letter #8

Open Letter

David Duffy | **10 June 2019**

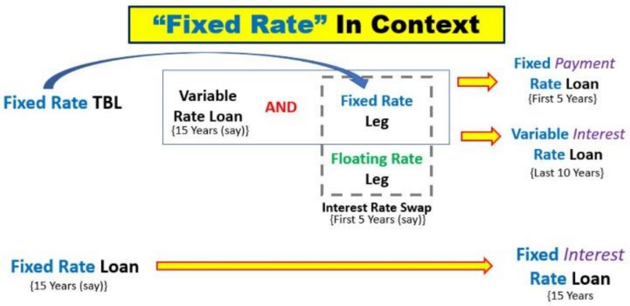
@davidduffycybg | *{Open Letter #8}*

Dear David

Re: Confusion over the Phrase "Fixed Rate TBL"

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

Many of these loans have been referred to as "**Fixed Rate TBLs**" and then misrepresented to the **Financial Ombudsman Service**, borrowers and Members of Parliament as simple "**Fixed** *Interest* **Rate Loans**".



In a *bona fide* "**Fixed Rate TBL**", the "**Fixed Rate**" refers to the "**Swap Rate**" of a <u>second contract</u> which is utilised in conjunction with a **Variable Rate Loan** contract. The <u>second contact</u> is a **Contract for Difference** {an **Interest Rate Swap**} and would be subject to regulation by the **FSA/FCA**.

In the worked example shown in the table in the ***Attachment A*** to **Open Letter #8**, the "**Swap Rate**" is **5.00%,** which is the "**Fixed Rate**" of the **Fixed Rate** leg of the **Interest Rate Swap**, compared to the **Floating Rate** Leg. An **Interest Rate Swap** is referenced in the "***Strategy Paper***" {***Attachment B***}.

If the **Business Solutions** Division of *Clydesdale Bank*, instead of making an offer for a **Variable Interest Rate** loan at a Margin of 1.5% *{including mandatory costs*}, had made an offer in writing of a simple **Fixed *Interest* Rate** Loan facility, the **Fixed** *Interest* **Rate** would have been 6.50% {and, not 5.00%}.

If this alternative offer had been made then the borrower's monthly payments would have been the same. However, no such alternative offer was made and accepted.

If you dispute this interpretation of the term "**Fixed Rate TBL**", can you please advise the **Financial Ombudsman Service (@financialombuds)** accordingly.

@CYBG_RemSupGrp

Open Letter #8 – Attachment A

Open Letter

nab

Clydesdale Bank

10 June 2019

@davidduffycybg

{Open Letter #8}

Attachment A - "Fixed Rate TBL"

In a *bona fide* "**Fixed Rate TBL**", the "**Fixed Rate**" refers to the "**Swap Rate**" of a second contract which is utilised in conjunction with a **Variable Rate Loan** contract.

In the example table below, it is assumed that a **Variable Interest Rate** Loan has been fully hedged with an **Interest Rate Swap** contract for the first year only.

In this example, the "**Swap Rate**" is **5.00%** and is also referred to as the "**Fixed Rate**" leg in comparison to the "**Floating Rate**" leg.

Bona Fide "Fixed Rate TBL"

Loan Amount 1,000,000 GBP {Full Hedged for One Year}

Swap Rate 5.00% {"Fixed Rate"}

				Loan Contract	Interest Rate Swap Contract for Difference			
	1M-LIBOR	Margin + Mandatory Costs	Total	Lending Bank Receives {GBP}	1M-LIBOR minus Swap Rate	Floating Rate SWAP Counterparty Pays {GBP}	Floating Rate SWAP Counterparty Receives {GBP}	Borrower Pays {GBP}
Jan	5.00%	1.5%	6.50%	5,417	0.00%	-		5,417
Feb	5.20%	1.5%	6.70%	5,583	0.20%	166.67		5,417
Mar	5.40%	1.5%	6.90%	5,750	0.40%	333.33		5,417
Apr	5.60%	1.5%	7.10%	5,917	0.60%	500.00		5,417
May	5.30%	1.5%	6.80%	5,667	0.30%	250.00		5,417
June	5.00%	1.5%	6.50%	5,417	0.00%	-		5,417
Jul	4.70%	1.5%	6.20%	5,167	-0.30%		250	5,417
Aug	4.50%	1.5%	6.00%	5,000	-0.50%		417	5,417
Sep	4.00%	1.5%	5.50%	4,583	-1.00%		833	5,417
Oct	3.50%	1.5%	5.00%	4,167	-1.50%		1,250	5,417
Nov	3.30%	1.5%	4.80%	4,000	-1.70%		1,417	5,417
Dec	3.00%	1.5%	4.50%	3,750	-2.00%		1,667	5,417

The "**Margin**" is prescribed in the **Variable Interest Rate** Loan contract.

In a simple **Fixed** *Interest* **Rate Loan** contract where the borrower would be making the same monthly payments the "**Fixed** *Interest* **Rate**" would be **6.50%** {and not **5.00%**}.

@CYBG_RemSupGrp

Open Letter #8 – Attachment B

Open Letter

10 June 2019

@davidduffycybg {Open Letter #8}

Attachment B - "Fixed Rate TBL"

In a *bona fide* "**Fixed Rate TBL**", the "**Fixed Rate**" refers to the "**Swap Rate**" of a second contract which is utilised in conjunction with a **Variable Rate Loan** contract.

The "**Fixed Rate**" used in the context of a "**Swap Rate**" in the "**Interest Rate Hedging Strategy**" paper provided to SME borrowers before the offer document "***Facilities***" Letter was sent to them.

The "**Floating Rate**" leg of an **Interest Rate Swap** between two identifiable counterparties was also shown on the associated diagram.

January 2008

Dear Mr G

RE: Tailored Business Loan Hedging Options / Indicative Interest Rate Hedging Strategy

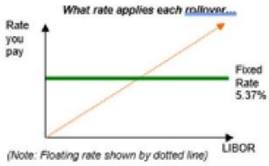
It was most interesting meeting with you last Thursday, and following our discussions, I have put together the solutions we spoke about.

Fixed Rate Facility (£3.7mln)

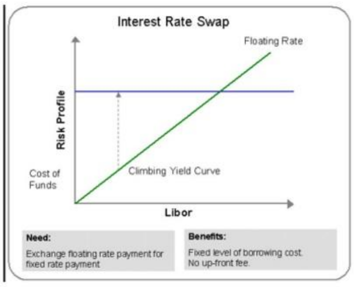
	Rate	Margin + MLA	All-in-Rate	Monthly Capital & Int. Repayments*
25 years	5.37%	2.00%	7.37%	£27165.88

*After the first 12 months capital holiday

- ✓ Interest known from start.
- ✓ Complete certainty from any rises in rates.
- × Unable to benefit from rate cuts.
- × Early repayment could result in a break cost.



Kevin J Horne
Senior Partner
Treasury Solutions



The diagram used to illustrate the "***Fixed Rate Facility***" in the Interest Rate Hedging Strategy Paper is the same as can be found in many text books on hedging and the use of **Interest Rate Swap** contracts.

Interest Rate Swaps are a form of "**Contract for Difference**" which are regulated by the **Financial Conduct Authority (FCA)** and formerly by the **Financial Services Authority (FSA).**

Open Letter #9

Open Letter

David Duffy **16 June 2019**

@davidduffycybg *{Open Letter #9}*

Dear David

Re: The "Fixed Rate TBL" Offer Document

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

One of the defining features of a so-called "**Tailored Business Loan**" was the presence of <u>two offers</u> in the offer document {***Facilities Letter***}.

In the case of a loan facility classified as a "**Fixed Rate TBL**" these offers are:

"Fixed Rate Tailored Business Loan"		**Outcome**
Offer #1	For the "**Financial Solutions**" Division of Clydesdale Bank to provide a **Variable Interest Rate Loan** Facility	Loan advanced and the borrower then had a legal obligation to make monthly **variable rate interest** payments at the prescribed margin to **LIBOR**.
Offer #2	For the "**Treasury Solutions**" Division of nab to act as an **Agent** for the borrower to arrange an **Interest Rate Swap** with a "**Third Party**"	An **Interest Rate Swap** was "*priced*", however no **SWAP** {***Contract for Difference***} was ever executed with an identifiable "**Third Party**".

Utilising both Contracts would provide a **Fixed** *Payment* **Rate Loan** Facility

Loan payment obligation was to pay variable interest at the prescribed variable rate

Included in the offer document was a selection of one or more forms of interest rate movement protection {*insurance*} that could be utilised to protect the **variable interest rate** loan facility from adverse movements in interest rates during the term of the loan.

The borrower could select one {or none} of these options and then **NAB Treasury Solutions** was under a duty to not only "*price*" an **Interest Rate Swap** contract but to also execute such a contract with an identifiable "**Third Party**" as per **Condition 8.1**.

If you dispute the type and number of offers made in the ***Facilities Letter***, can you please advise the **Financial Ombudsman Service** (**@financialombuds**) accordingly.

@CYBG_RemSupGrp

Open Letter #10

Open Letter

David Duffy **17 June 2019**

@davidduffycybg *{Open Letter #10}*

Dear David

Re: The Interest Rate Swap Myths – Part 1

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

In a letter dated 31 January 2017 addressed to Rt Hon Nick Clegg MP, John Griffiths-Jones, Chairman of the **Financial Conduct Authority (FCA)** responded to ***Parliamentary Early Day Motion 598 Clydesdale Bank Refinancing Practices*** {Refer to **Open Letter #10** – **Attachment A**}

Fixed rate commercial loans

Fixed rate commercial loans, sometimes referred to as 'tailored business loans', have similar characteristics to IRHPs. However, as confirmed by independent legal advice obtained by the Treasury Committee, commercial lending is not regulated, and the FCA's rules and principles do not apply to the sale of fixed rate commercial loans.

For this reason, the FCA cannot require the banks to set up a redress scheme for such products. It would be for Parliament to decide whether the FCA's remit should be extended to cover these loans. However, even in the event that our remit was extended, we could not take action retrospectively.

The **FCA** Chairman is promoting the myth that so-called "**Fixed Rate TBLs**" were simple **Fixed** *Interest* **Rate Loans**, based on the name alone, without making reference to the written contract documents for loans classified as "**Fixed Rate TBLs**" by Clydesdale Bank.

This myth was initiated by Martin Wheatley, a former Chief Executive of the **FCA**, who in a letter dated 9 May 2013 advised the Financial Secretary to the Treasury, Tr Hon Greg Clark MP, that commercial loans with "**an '*embedded*' IRHP**" are not subject to regulation by the **FCA**, while so-called "**standalon**e" **IRHP**s are subject to regulation.

This seems to be a very arbitrary distinction. A written contract is merely a record of the intentions of the parties to a contract.

Interest Rate Swaps are just one type of **Interest Rate Hedging Product (IRHP)**.

So, an important question to resolve is:

"**Do so-called 'Fixed Rate TBLs' contain an 'embedded' Swap?**"

This question will be addressed in future **Open Letters** to **@davidduffycybg.**

@CYBG_RemSupGrp

Open Letter #10 – Attachment A

Open Letter

nab

Clydesdale Bank

David Duffy

17 June 2019

@davidduffycybg

{Open Letter #10 – Attachment A}

Dear David

Open Letter #10 – Attachment A

CLYDESDALE BANK REFINANCING PRACTICES

EDM #598

Share

Tabled 26 October 2016

2016-17 Session

That this House notes the June 2012 findings of the Financial Services Authority (FSA) that there were serious failings in the sale of interest rate hedging products to some small and medium-sized businesses by Clydesdale Bank; further notes the earlier critical findings of the Treasury Select Committee that the voluntary redress procedures implemented by Clydesdale Bank were inadequate; regrets that the subsequent behaviour of the bank has done nothing to date to improve customer confidence in this system of redress; criticises the bank for being less than fully transparent about the costs, penalties, obligations and calculations attached to its break clauses; notes that the bank has failed repeatedly in the redress process to give details of so-called third party hedges that triggered excessive financial penalties for clients; encourages the bank and its representatives to provide more accurate and consistent information, such as terms and conditions to its customers when they inquire about their personal finances; further encourages the FCA regulator to re-examine the voluntary redress scheme and ensure Clydesdale Bank's customers have been fairly treated.

Signatures (81)

The first 6 Members who have signed to support the motion are the sponsors. The primary sponsor is generally the person who tabled the motion and has responsibility for it. The date shown is when the Member signed the motion.

Gethins, Stephen
Scottish Na...
26 October 2016 Primary
1

Hosie, Stewart
Scottish National Party
26 October 2016
2

Kerevan, George
Scottish National Party
26 October 2016
3

Blackford, Ian
Scottish National Party
26 October 2016
4

Day, Martyn
Scottish National Party
27 October 2016
5

Stephens, Chris
Scottish National Party
27 October 2016
6

@CYBG_RemSupGrp

Open Letter #11

Open Letter

David Duffy **17 June 2019**

@davidduffycybg *{Open Letter #11}*

Dear David

Re: The Interest Rate Swap Myths – Part 2

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

Because of the "*innovative*" nature of this financial product, a number of myths have developed with respect to **Interest Rate Swaps** purportedly associated with some of these types of loan facilities.

Some of these myths have even been promoted by the **Financial Services Authority (FSA)** and then later by the **Financial Conduct Authority (FCA).**

These myths are:

- **(i) Hidden Swaps;**
- **(ii) Embedded Swaps;**
- **(iii) Internal Swaps;**
- **(iv) Loan Book Swaps that have been terminated before maturity.**

No 'Embedded Swaps'

Former CEO Clydesdale Bank

HOUSE OF COMMONS

Treasury Committee

Chair: We are talking about embedded swaps here.

David Thorburn: There is not an embedded swap in any of these products, and I can explain how this worked if it is of interest to the Committee but none of these products have an individual embedded swap.

Chair: Of course by being classified as a tailored business loan they do not come under the direct regulatory supervision of the FCA, is that correct?

David Thorburn: Yes that is correct.

17 June 2014

Myth (ii) can be eliminated by the testimony of former Clydesdale Bank CEO, David Thorburn.

If you dispute the testimony of former Clydesdale Bank CEO, David Thorburn, before the Treasury Select Committee, can you please advise the **Financial Ombudsman Service (@financialombuds)** accordingly.

@CYBG_RemSupGrp

Open Letter #12

Open Letter

NAB / Clydesdale Bank

David Duffy **17 June 2019**

@davidduffycybg *{Open Letter #12}*

Dear David

Re: The Interest Rate Swap Myths – Part 3

In **The Interest rate Swap Myths – Part 2** it was noted that some of these myths have even been promoted by the **Financial Services Authority (FSA)** and then later by the **Financial Conduct Authority (FCA).**

These myths related to so-called "**Fixed Rate TBLs**" are that they contained:

(i) **Hidden Swaps; or**
(ii) **Embedded Swaps;**

Myth (ii) can be eliminated by the testimony of former Clydesdale Bank CEO, David Thorburn as covered in **Part 2**.

If the terms of the contract are uncertain or incomplete, the parties cannot have reached an agreement in the eyes of the law.

While agreement is the basis for all contract, not all agreements are enforceable. A primary question is whether the contract is reasonably certain in its essential terms {*essentialia negotii*} such as price, subject matter and the identity of the parties.

If a term is so uncertain that it cannot be given a sensible meaning, the term is either severed from the contract or else, if that is not possible, the whole contract is declared to be void which means that it never existed (despite the parties' assumptions and actions).

Clearly, a so-called '***hidden swap***' would need to be severed from the loan contract due to uncertainty.

Likewise, a so-called '***embedded swap***' would need to be severed from the loan contract if the *essentialia negotii* were not prescribed in the contract documents.

The **Essential Terms** {*essentialia negotii*} for an **Interest Rate Swap** Agreement

Party A {**Floating Rate** leg}:
Party B {**Fixed Rate** leg}:
Notional Amount (Principal):
Currency:
Tenor {Duration}:
Interest Rate Benchmark:
Swap Rate:
Payment Frequency:

Note: The **National Amount** can be less than the loan Principal and the **Tenor** can be less than the term of the loan facility

Open Letter #13

Open Letter

David Duffy **18 June 2019**

@davidduffycybg *{Open Letter #13}*

Dear David

Re: The Interest Rate Swap Myths – Part 4

In **The Interest Rate Swap Myths – Part 3,** Myths **(i) 'Hidden Swaps'** and **(ii) 'Embedded Swaps"** were dealt with.

But were there so-called ***'Internal Swaps'*** between Divisions of the **National Australia Bank (@NAB)?**

An offer of a **Variable Interest Rate** Loan facility had been offered by the Financial Solutions Division of *Clydesdale Bank*, which was at the time a subsidiary company of **National Australia Bank**. This loan offer was accepted by SME Borrowers.

So after acceptance of the **Variable Rate Loan** offer, did the Financial Solutions Division arrange so-called '***Internal Swaps***" with the Treasury Solutions Division of **NAB**?

A typical offer document listed a number of '*hedging options*', however none of these options included the **Essential Terms** {*essentialia negoti*} that would be required for an enforceable hedging contract. There were, however**, Essential Terms** for a **Variable Interest Rate** loan contract.

If there were any '***Internal Swaps'***, the borrowers would have to advise the Financial Solutions Division that other hedging options (eg **Interest Rate Cap**} were not required and then agree on the **Essential Terms** for an **Interest Rate Swap**. Financial Solutions would then need to contact **NAB** Treasury Solutions with this information to arrange a *back-to-back* so-called '***Internal Swap***".

However, the offer document advised borrowers to contact a Treasury Solutions representative directly to arrange interest rate movement protection for the loan offer that they had accepted.

In any event, Mr Justice Mann in ***Barnett-Waddington Trustees (1980) Ltd & Ors v The Royal Bank of Scotland Plc*** [2017] EWHC 834 (Ch) ruled that a "***break cost***" could not be imposed on the early termination of a so-called '**Internal Swap**' since no loss was actually incurred by the parent bank – a notional loss in one Division was offset by a notional gain in another Division of the bank.

No evidence of the Financial Solutions Division arranging '***Internal Swap***s' with the necessary **Essential Terms** can be produced by *Clydesdale Bank* because no such '***Internal Swaps***' were arranged with **NAB** Treasury Solutions.

Even if such '***Internal Swaps***' did exist, an enforceable '***break cost'*** could not be imposed on SME borrowers in the event such '***Internal Swaps***' were terminated before maturity.

@CYBG_RemSupGrp

Open Letter #14

Open Letter

David Duffy **18 June 2019**

@davidduffycybg *{Open Letter #14}*

Dear David

Re: The Interest Rate Swap Myths – Part 5

In **The Interest Rate Swap Myths – Part 3,** Myths **(i) 'Hidden Swaps'** and **(ii) 'Embedded Swaps"** were dealt with. In **Part 4**, **(iii)** '**Internal Swaps**" were dealt with.

But what about loan book/balance sheet hedging by the **Treasury Division** of the **National Australia Bank (@NAB)?**

The former CEO of ***Clydesdale Bank***, David Thorburn testified before the **Treasury Select Committee** on 17 June 2014 as follows:

> **Chair:** Are you offering hedging embedded as part of the loan or separated out?
>
> ***David Thorburn***: There is no individual hedge. I am not trying to avoid your question; I am trying to be precise in my answer to your question.
>
> There is no individual embedded swap in any of these loans. The swaps are aggregated by a parent company as part of the broader balance-sheet management activities and funding.

This begs the question as to how the "***swaps are aggregated by the parent company as part of the broader balance sheet management activities and funding***" in light of the doctrine of **Privity of Contract**.

The **Treasury Division** of **National Australia Bank (NAB)** does undertake trading with "**Third Parties**" with all types of hedging instruments which are not limited to **Interest Rate Swaps**.

However, SME borrowers are not privy to any of these hedging contracts.

Furthermore, the **Treasury Division** is not in the habit of terminating any of these hedging instruments (contracts) before maturity and thereby incurring '***Break Costs***" or "***Break Gains***".

Therefore, there are no "***break costs***" to allocate back to any particular SME loan, even if this were technically and legally possible.

If the **Financial Solutions** Division of ***Clydesdale Bank*** had made offers of simple **Fixed** *Interest* **Rate Loans** to SME borrowers, then it would be necessary to include a '**Redemption Charge**' in the **T&Cs** document for early termination of the loan, since there is no *back-to-back* **Interest Rate Swap** associated with a simple **Fixed** *Interest* **Rate Loan**. However, no such "**Redemption Charge**" was included in the **T&Cs** document provided with **Tailored Business Loans** {See **Attachment A**}.

@CYBG_RemSupGrp

Open Letter #14 – Attachment A

Open Letter

David Duffy

18 June 2019

@davidduffycybg

{Open Letter #14 – Attachment A}

Part 5 – Attachment A

The offer document {***Facilities Letter***} for a **Tailored Business Loan (TBL)** contained this warning in relation to **Condition 8 - Break Costs**.

THIS IS AN IMPORTANT LEGAL DOCUMENT. ONCE YOU HAVE SIGNED IT YOU WILL BECOME LEGALLY BOUND BY ITS TERMS.

IN PROVIDING FACILITIES WE DO NOT GIVE ANY INVESTMENT, FINANCIAL, TAXATION, LEGAL OR OTHER ADVICE. YOU MUST SATISFY YOURSELF THAT A FACILITY IS SUITABLE FOR YOUR CIRCUMSTANCES AND PURPOSES. YOU SHOULD NOT ENTER INTO ANY LOAN DOCUMENTS IF YOU DO NOT UNDERSTAND THE RISKS (INCLUDING THE CONDITIONS AND, IN PARTICULAR, CONDITION 8 RELATING TO BREAK COSTS). WE STRONGLY RECOMMEND THAT YOU TAKE INDEPENDENT LEGAL AND FINANCIAL ADVICE BEFORE YOU SIGN THIS DOCUMENT.

Condition 8 provided for a "***Break Cost***" in the event of the early termination of a "***Hedging Arrangement***" and for the early termination of the **variable rate loan** that had been hedged against adverse interest rate movements {or that had remained unhedged}.

Condition 8

Break Costs

8.1 Acknowledgement
8.2 Indemnity
8.3 Calculation
8.4 Break Gains

Provisions for the early termination of a "*Hedging Arrangement*"

8.5 Variable Rate Break Costs

8.6 {Missing}

However, there was no provision for a "***break cost***" or "***redemption charge***" for the early termination of a simple **Fixed** *Interest* **Rate Loan** facility, along the lines of the following example:

2.11 EARLY REPAYMENT OF LOANS WITH FIXED INTEREST

For loans with a fixed interest rate an extra repayment premium may apply if the Borrower wishes to repay all or part of the loan before the expiry of the Fixed Term. If the standard fixed rate, for the same term of years as the loan was higher at the time the loan was drawn down, than the standard fixed rate for a period equivalent to the unexpired term of the loan at the time the Borrower makes the extra repayment, a redemption charge will be levied. This redemption charge will be calculated based on the Present Value of the difference between the two rates over the balance of the remaining loan and the Early Repayment Fee ("the redemption charge").

@CYBG_RemSupGrp

Open Letter #15

Open Letter

nab

Clydesdale Bank

David Duffy **19 June 2019**

@davidduffycybg *{Open Letter #15}*

Dear David

Re: Identity of the Parties to a Contract

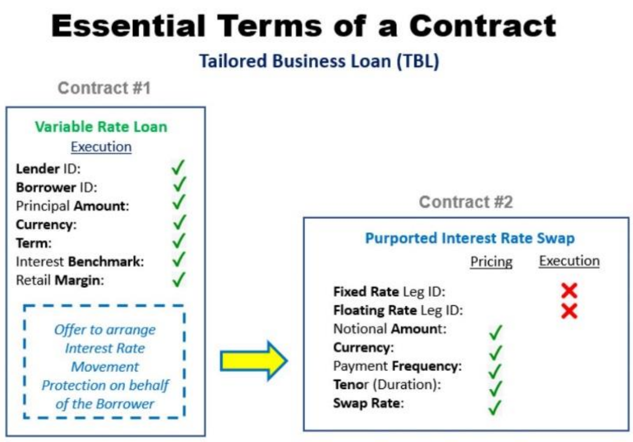
There have been a number of **Interest Rate Swap Myths** associated with **'Tailored Business Loans**" as covered in previous Open Letters.

Mrs Justice Rose in a hedged commercial loan case {*London Executive Aviation Ltd v The Royal Bank of Scotland Plc* [2018] EWHC 74 (Ch)} cited the comments of Lord Millet in *The Starsin* [2004] 1 AC 715:

> 175. The identity of the parties to a contract is fundamental. It is not simply a term or condition of the contract. It goes to the very existence of the contract itself. If it is uncertain, there is no contract.

This goes to the heart of why ***Clydesdale Bank*** is now falsely claiming that "**Fixed Rate TBLs**" are simple **Fixed** *Interest* **Rate Loans** that only have two identifiable parties to a contract with no associated second *back-to-back* hedging contract {***Contract for Difference***}.

This diagram illustrates the structure of a so-called "**Fixed Rate TBL**".



The **Essential Terms** for a **Variable Interest Rate** Loan contract were included in the offer document {***Facilities Letter***} that was accepted by the SME borrower – therefore a legally enforceable contract.

A separate *back-to-back* **Interest Rate Swap** was '*priced*' by **NAB Treasury Solutions**, however, no legally binding second contract was ever executed with identifiable counterparties.

@CYBG_RemSupGrp

Open Letter #16

Open Letter

David Duffy **19 June 2019**

@davidduffycybg *{Open Letter #16}*

Dear David

Re: Assignment of Loans to a Vulture Fund

The **National Australia Bank (NAB)** under the leadership of Andrew Thorburn who resigned in disgrace after the findings of Royal Commissioner Hayne in the Australian Banking Royal Commission, sought to extract **NAB** from its UK banking operation and legacy liabilities.

To allow ***Clydesdale Bank*** to be demerged into **CYBG** plc, the problematic "**Tailored Bussiness Loans**" were assigned to a subsidiary company of the US ***Vulture Fund*** – Cerberus Capital Management.

The value of so-called "**Fixed Rate TBLs**" in the books of ***Clydesdale Bank*** had three components:

(i) Outstanding principal;
(ii) Unpaid interest due on the variable rate loan; and
(iii) A "***Fees for No Service***" component which was the premiums deducted from the loan account for a non-existent **Interest Rate Swap** contract.

That is the third component was fraudulently included in the amount that was subject to assignment {assignation} to the ***Vulture Fund***.

Lord Denning said in *Lazarus Estates v Beasley* [1956] 1 QB 707 at 712-713:

> "No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgement of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

In a Media Release on 28 July 2014 related to Project Chestnut, it was revealed that gross impaired loans had been reduced by 48% by the disposal of £625m of non-performing commercial real estate loans to **Cerberus Capital Management**.

Andrew Thorburn stated:

> "This sale represents a substantial de-risking of the non-performing portfolio of the NAB UK CRE portfolio".

NAB and **Cerberus** will work together *"on a smooth transition"* for impacted borrowers, the statement added.

It would be in the interests of **CYBG** plc and its shareholders to bring this fraudulent assignment {assignation} of commercial loans committed by **NAB** to the attention of the **Financial Conduct Authority (FCA)**.

@CYBG_RemSupGrp

Open Letter #17

Open Letter

David Duffy **21 June 2019**

@davidduffycybg *{Open Letter #17}*

Dear David

Re: Misleading the Court – Part 1

For an offer of a simple **Fixed** *Interest* **Rate Loan** by a lending bank which is then accepted by a borrower, the ***Essential Terms*** {*Essentialia negotii*} must be able to be determined by a Court in an objective manner from the written contract. The same applies to the offer and acceptance of a **Variable** *Interest* **Rate Loan**.

These **Essential Terms** are:

Essential Terms of a Loan Contract

Essentialia negotii

In preparing a witness statement it should not be difficult for a banking executive to determine the difference between an offer document for a **Variable** *Interest* **Rate Loan** facility and a **Fixed** *Interest* **Rate Loan** facility.

> '***Variable and Fixed rate lending has been around for generations***'.

Douglas Campbell was the former **Head of Corporate Support** for ***Clydesdale Bank*** and swore a Witness Statement on 28 July 2015 {Extract attached in **Attachment A**}.

In the offer document in question, the **Interest Benchmark** was prescribed as **LIBOR** and a retail Margin of **2.25%** was prescribed, which confirms the offer of a **Variable** *Interest* **Rate Loan** facility.

Furthermore, a '**Break Cost**' for the early termination of a **Variable Rate Loan** was included in the associated **T&C**s document at **Condition 8.5**.

A **Fixed Interest Rate** was not prescribed in the offer document, nor was any '***Break Cost***' prescribed for a simple **Fixed** *Interest* **Rate Loan** that would not require any *back-to-back* hedging instrument.

The sworn testimony of Douglas Campbell was not supported by the evidence.

Open Letter #17 – Attachment A

Open Letter

David Duffy

21 June 2019

@davidduffycybg

{Open Letter #17- Attachment A}

Dear David

Open Letter #17 – Attachment A

Extract from **Witness Statement of Douglas Campbell –** Paragraphs 3.3 to 3.5.

I, Douglas Campbell, c/o Clydesdale Bank plc, 30 St Vincent Place, Glasgow G1 2HL, will say as follows:

....

3.3 One way the banking market met the demand from customers for certainty and protection from the effects of interest rate rises was through Interest Rate Hedging Products (**"IRHPs"**). IRHPs are regulated by the Financial Conduct Authority (**"FCA"**). These products are essentially contracts for differences, which enable a customer to manage fluctuations in interest rates, such as swaps and derivatives.

3.4 The Bank did not provide many IRHPs. The Bank is relatively small, compared to other UK banks. It has traditionally focused on the "small-to-medium-sized enterprise" or SME lending market and does not have many large corporate customers, who might be interested in these more complex and sophisticated products.

3.5 The Bank had a bespoke range of products known by their brand name, Tailored Business Loans (**"TBLs"**). Within this range of products, were Fixed Rate Tailored Business Loans (**"FRTBLs"**), which are not contracts for difference and are therefore not regulated in the same way as IRHPs. This was confirmed by the FCA General Counsel in a letter dated 26 June 2014 to the Treasury Select Committee of the House of Commons (Production 7/191). These products had characteristics which could provide customers with a degree of interest rate protection, through fixing interest over a period of time for some or all of the funds advanced.

Fixed rate lending has been around for generations, long before anything like swaps and derivatives and other IRHPs existed. With straightforward fixed rate lending like FRTBLs, the customer would have certainty over what their interest rate would be throughout the term of the fixed period, no matter what happened to interest rates in the UK.

....

I declare that the evidence in this witness statement is true to the best of my knowledge and belief.

SIGNED: ....

PRINT FULL NAME: DOUGLAS IAN CAMPBELL

DATE: 28 July 2015.

Open Letter #18

Open Letter

David Duffy **28 June 2019**

@davidduffycybg *{Open Letter #18}*

Dear David

Re: Misleading the Court – Part 2

For an offer of a simple **Fixed** *Interest* **Rate Loan** by a lending bank which is then accepted by a borrower, the ***Essential Terms*** {*Essentialia negotii*} must be able to be determined by a Court in an objective manner from the written contract. The same applies to the offer and acceptance of a **Variable** *Interest* **Rate Loan**.

These **Essential Terms** are:

Essential Terms of a Loan Contract

Essentialia negotii

Variable *Interest* **Rate Loan**
Execution

Lender ID: ✓
Borrower ID: ✓
Principal **Amount**: ✓
Currency: ✓
Term: ✓
Interest **Benchmark**: ✓ LIBOR
Retail **Margin**: ✓ 2.25%

'Break Cost' : Condition 8.5

Fixed *Interest* **Rate Loan**
Execution

Lender ID: ✓
Borrower ID: ✓
Principal **Amount**: ✓
Currency: ✓
Term: ✓
-
Fixed Interest Rate: ✓ ?

'Break Cost' : ?

Attached to this Open Letter is a copy of a typical **Tailored Business Loan (TBL)** Offer Document {"***Facilities***" letter}, which has been classified by *Clydesdale Bank* as a "**Fixed Rate TBL**" or "**FRTBL**".

Sections of the offer document have been redacted to make it easier to identify the ***Essential Terms***.

Essential Terms for a **Variable Interest Rate** Loan
{essentialia negotii}

ET#1: Party #1 {**The Lender**}:	Clydesdale Bank
ET#2: Party #2 {**The Borrower**}:	SME Borrower's Name
ET#3: The **Amount** (Principal):	3,950,000
ET#4: **Currency**:	GBP
ET#5: The **Term of the Loan**:	25 years
ET#6: Interest Rate **Benchmark**:	LIBOR {1-M Implied}
ET#7: Retail **Margin**:	2.25%

Can you provide an explanation at two why a much higher amount was taken from this borrower's loan account compared to what was required to service interest payments on a **Variable Rate Loan**?

Open Letter #19

Open Letter

David Duffy **1 July 2019**

@davidduffycybg *{Open Letter #19}*

Dear David

Re: Misleading the Treasury Committee – Part 1

From 2001 to 2012 when *Clydesdale Bank* (@clydesdalebank) was owned by the **National Australia Bank** (@NAB) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

Some of these loans have been classified as "**Fixed Rate TBLs**" or "**FRTBLs**" by *Clydesdale Bank,* even though borrowers signed a loan contract that provided a **variable rate loan** facility.

Debbie Crosbie is now the CEO of **TSB**, however, in 2014, Ms Crosbie was the Executive Director - Customer Trust and Confidence - **NAB Group Europe**, and testified before the **Treasury Committee**:

> **Mr Newmark:** I am fascinated with your title, Debbie. It looks like something created in the BBC's W1A: Executive Director, Customer Trust and Confidence.
>
> ***Debbie Crosbie***: Yes.

……………………………………………

> ***Debbie Crosbie***: Yes, it might be helpful to make you aware that over that period, the 13-year period we are discussing, there were just over 8,300 loans, fixed-rate loans, the ones that you have focused on, sold. To date we have received 550 complaints about the sales process and on most occasions, we believe when we examine the case file the sale was conducted in a manner that was I think entirely fine. We absolutely accept though that there were a number of occasions where, because of the interest rate environment that we found ourselves in, the
>
> customers did not anticipate the magnitude of those break costs and that is why we have set up this specific review. Where customers feel that is the case, we have absolutely encouraged them to come and talk to us and we will make sure that if we find that to be the case we will put that right for them.

Ms Crosbie made a commitment for customers to "***come and talk with us***" and for **NAB** and ***Clydesdale Bank*** to "***put that right for them***".

When Ms Crosbie, former **Executive Director, Trust and Confidence**, is called as a witness before the Courts in class actions that are now proceeding, will Ms Crosbie be able to explain how many of these 8,300 loan cases with trusting customers were "***put right***"?

@CYBG_RemSupGrp

Open Letter

David Duffy **1 July 2019**

@davidduffycybg *{Open Letter #20}*

@cybgplc

Dear David

Re: Discussing 'Appropriate Interest Rate Hedging"

From 2001 to 2012 when *Clydesdale Bank* (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

If the bank offered a **Variable Interest Rate Loan** facility that was accepted by a SME customer, then the customer might be interested in adding some interest rate movement protection (aka Interest Rate Hedging Products) to protect from a substantial rise in interest rates in the coming years.

However, if the bank offered a simple **Fixed** *Interest* **Rate Loan** facility and this was accepted, then adding any interest rate movement protection would be pointless and a waste of money.

Here are just two examples from the offer document of SME customers whose loans have been classified as "**Fixed Rate TBLs**" or "**FRTBLs**" by Clydesdale Bank.

FOS Case Study #3

11.7. You agree to speak to our Treasury Representative with regard to protection of the debt within 3 months of first utilisation of the facility.

FOS Case Study #2

(g) You agree to discuss appropriate interest rate hedging to protect against adverse interest rate movements.

Definition: Interest Rate Hedging

> "The activity of using financial products to protect against future changes in interest rates"
>
> To "*insure oneself against loss*,"

So why were these clauses included in the offers made to these SME customers who according to the bank have a simple **Fixed *Interest* Rate Loan** facility?

The **Financial Ombudsman Service** (**@financialombuds**) may be interested in your explanation.

@CYBG_RemSupGrp

Open Letter

David Duffy **2 July 2019**

@davidduffycybg *{Open Letter #21}*

Dear David

Re: Treatment of SME Customers

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

As part of the former CEO of **National Australia Bank**, Andrew Thorburn's strategy to exit UK banking, commercial property loans were sold to the US **Vulture Fund** – Cerberus Capital Management {*which was named after the attack dog guarding the gates of Hell*}!

These loans were sold at a discount to face value {which included a fraudulent component above the amount required to service a **variable rate loan** facility} – so a case of "***Dirty Deeds Done Dirt Cheap***".

This action has put these SME customers onto "***The Highway to Hell***".

The UK **Financial Ombudsman Service** has taken an interest in the plight of these SME Customers.

A complaint concerning the fraudulent component of the commercial loans assigned to this **Vulture Fund** {or **Vampire Fund**} will be raised this **@cybg.plc** and yourself.

@CYBG_RemSupGrp

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #22}* **7 July 2019**

Dear David

Re: Agreement to Agree

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

"**Tailored Business Loans**" were a range of bespoke loans designed by **National Australia Bank** to avoid regulation by the **Financial Services Authority (FSA)** {Which was replaced by **@TheFCA**}.

The following is an example of a "**Fixed Interest Rate**" Loan that contains an "***Agreement to Agree***".

Lending Bank: Clydesdale Bank

Borrower: SME Customer

Date of Offer: _______

FACILITIES

This letter sets out the terms and conditions on which we are prepared to make available to you facilities which in aggregate do not exceed the Total Facility Amount (which at the date of this letter is £1,000,000.

The Facilities comprise:

- A **Fixed Rate Loan** Facility

"Final Maturity Date" means the 15th anniversary of the first utilisation of any Facility.

Liquidated Damages {pre-agreed demages} for the early termination of this **Fixed Rate Facility** are provided for in **Condition 8.6** in the associated Terms & Conditions document. {**Warning – Liquidated Damages** may be substantial}.

You must agree with our **Treasury Representative** the **Fixed Interest Rate** for this loan facility AFTER you have executed this contract document {that is, accepted this offer of a **Fixed Rate Loan** Facility}.

For and on Behalf of Clydesdale Bank: _________ For and On Behalf of Borrower: __________

As a general rule "***Agreements to Agree***" are not enforceable. Mr Duffy were you aware of this?

@CYBG_RemSupGrp

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #23}* **7 July 2019**

Dear David

Re: Liquidated Damages - Part 1

From 2001 to 2012 when *Clydesdale Bank* (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

"**Tailored Business Loans**" were a range of bespoke loans designed by **National Australia Bank** to avoid regulation by the **Financial Services Authority (FSA)** {Which was replaced by **@TheFCA**}.

A feature of some of these bespoke loans was the very high purported "***Break Costs***" that *Clydesdale Bank* sought to impose {or did impose} on borrowers who sought to terminate the **TBL** facility before the agreed maturity date {for example when seeking to refinance when interest rate fell to historic lows}.

Parties to a contract are free to agree to the inclusion of a **Liquidated Damages** clause into the terms of a contract. In the event of a breach of contract, the non-defaulting party can then demand payment of the pre-agreed **Liquidated Damages**.

If no **Liquidated Damages** clause is included in a contract, then damages for a breach of contract are "***at large***" and the non-defaulting party must seek a Court Order for compensation for any losses incurred due to the breach of contract by the other party.

In the case of a **Variable Interest Rate** Loan, there are only two contracting parties – the Bank and the Borrower. These parties can agree to include a **Liquidated Damages** clause in the loan contract.

If this **Variable Interest Rate** loan is then to be hedged with a "**Contract for Difference**", then different parties may be involved and so pre-agree damages must be agreed to by these parties in a separate contract.

In the case of a *simple* **Fixed Interest Rate** Loan, there are only two contracting parties – the Bank and the Borrower. Therefore another **Liquidated Damages** clause can be included in the loan contract in the event of an early termination of the **Fixed Interest Rate** Loan facility before the agreed maturity date. The methodology must also be pre-agreed if not a flat amount.

In the contract document, borrowers were warned of the risks, especially **Condition 8** relating to "**Break Costs**".

So David, was a **Liquidated Damages** clause included in **Condition 8** for the early termination of a simple **Fixed Interest Rate** loan facility, that would have allowed the Bank to demand "***Break Costs***"?

@CYBG_RemSupGrp

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #24}* **7 July 2019**

Dear David

Re: Liquidated Damages - Part 2

A feature of some of the bespoke loans, know as **Tailored Business Loans**, was the very high purported "***Break Costs***" that *Clydesdale Bank* sought to impose {or did impose} on borrowers who sought to terminate the **TBL** facility before the agreed maturity date.

Debbie Crosbie, **Executive Director, Trust and Confidence**, testified on 17 June 2014 before the **House of Commons** Treasury Committee:

Steve Baker: Ms Crosbie, you mentioned in passing that the magnitude of the break costs was a consequence of the interest environment. Could you just briefly explain how?

Debbie Crosbie: Yes. The question was referring to our fixed-rate business loans and our fixed-rate tailored business loans operate in a way whereby when the customers agreed the deal with the bank, the payment does not change. It is an agreed payment for a fixed duration which is why we believe these products are more simple than the more complex ones that you were referring to. When the customer decides that they want to terminate the contract early, what we look at is the difference between the interest rate that is prevailing at the moment and when the interest rate was set, and for the remaining period of time, the customer is charged the difference effectively of those interest rates.

However, Debbie Crosbie committed a serious act of omission by failing to testify that **a Liquidated Damages** clause had not being included in **Condition 8** of the associated **Terms and Conditions** document so that this methodology had been pre-agreed with the borrower.

That is while a **Liquidated Damages** clause had been included in **Condition 8.5** for the early termination of a **Variable Rate Loan** contract, there was no **Condition 8.6** similar to this:

8.6 Fixed Interest Rate Break Costs

For loans with a fixed interest rate an extra repayment premium may apply if the Borrower wishes to repay all or part of the loan before the expiry of the Fixed Term. If the standard fixed rate, for the same term of years as the loan was higher at the time the loan was drawn down, than the standard fixed rate for a period equivalent to the unexpired term of the loan at the time the Borrower makes the extra repayment, a redemption charge will be levied. This redemption charge will be calculated based on the Present Value of the difference between the two rates over the balance of the remaining loan and the Early Repayment Fee ("the redemption charge").

Therefore damages were "*at large*" for any simple **Fixed Interest Rate** Loan and *Clydesdale Bank* would need to obtain a Court Order before imposing any "***Break Costs***" for early termination.

@CYBG_RemSupGrp

#CYBGclassaction

OPEN LETTER

@DavidDuffyCYBG @CYBG

David Duffy *{Open Letter #25}* **7 July 2019**

Dear David

Re: The So-Called "Trade Call"

A feature of some of the bespoke loans, know as **Tailored Business Loans,** was the requirement to agree to the pricing of certain loan options in a verbal manner in a so-called "***Trade Call***" AFTER the written loan contract had been executed.

Putting aside the question of an "***Agreement to Agree***" what was the purpose of the "***Trade Call***"?

Was the purpose:

(i) To provide informations to assist with a decision as to whether or not to obtain interest rate movement protection from the bank or another provider?
(ii) To enter into a separate "**Contract for Difference**" such as an Interest Rate Swap?
(iii) To vary the existing contract that had been executed before the "***Trade Call***"?

The following terms are ambiguous since they can have two meaning:

(i) "**Fixed Rate Loan**" can mean either a "**Fixed** *Payment* **Rate Loan**" or a "**Fixed** *Interest* **Rate Loan**";
(ii) "**Fixed Rate**" can mean either the "**Swap Rate**" on the "**Fixed Rate**" Leg of an Interest Rate Swap or the "**Fixed** ***Interest*** **Rate**" that applies to a simple Fixed Interest Rate Loan facility.

Verbal agreements can be unenforceable, just as written agreements due to uncertainty of Essential Terms or the uncertainty to enter into a contract, even if the verbal discussion is recorded.

If the purpose was (ii) above, then this could be confirmed by the production of a document confirming a "**Contract for Difference**" between identifiable counterparties that would be subject to regulation by the **FSA/FCA**.

If the purpose was (iii) above, then this could be confirmed by the **Treasury Representative** advising the **Financial Solutions** Representative to prepare a ***Variation to Contract*** document for the borrower to sign that would vary the terms of the original executed offer document to which the **Financial Solutions** Division was a party.

If evidence of neither of these two alternatives cannot be produced, then the default position is that the outcome of the "***Trade Call***" was merely the provision of information (i), such as the '*price*' of an Interest Rate Swap contract if the borrower were to utilise such a separate contract as a means of interest rate movement protection (insurance) in the near future.

@CYBG_RemSupGrp

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #26}* **14 July 2019**

Dear David

Re: Interest Rate Hedging

From 2001 to 2012 when *Clydesdale Bank* (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

The **Terms and Conditions (T&Cs)** document in **Section 21.1** states:

> " '**Hedged Facility'** means a Facility which is not a Variable Rate Facility"

Borrowers were led to believe that if they accepted the offer of a **Variable Rate Loan** Facility then they would be able to utilise a separate hedging contract that could be varied during the term of the variable rate loan facility as interest rate movement expectations changed.

This is the definition of a '**hedge**':

A hedge is not a loan. It is a separate contract that acts like an insurance policy to protect you from adverse movements in interest rates. Types of hedges include:

- **Interest Rate Cap:** a separate contract that puts an upper limit on the interest rate of a customer's floating rate loan. Caps provide protection from rising rates, while still permitting a customer to benefit from falling rates. Customers pay an upfront fee for this protection.
- **Interest Rate Floor:** a separate contract that puts a lower limit on the interest rate of a customer's floating rate loan. Customers receive an upfront fee for giving up the benefit of falling rates.
- **Interest Rate Collar:** a combination of a Cap and a Floor that puts both an upper and lower limit on the interest rate of a customer's floating rate loan. Collars are often structured as "Costless," so that the fee paid for the Cap is equal to the fee received for the Floor.
- **Interest Rate Swap:** a separate contract that allows a customer to effectively convert a floating rate loan to a fixed rate for a period of time. There is no upfront cost to a Swap. The cost is built into the rate.
- **Forward:** a hedge executed today with an effective starting date some specific date in the future. For example, a customer with a balloon payment on a loan due in 6 months could use a Forward Swap to lock in an interest rate for the renewal of the loan, and eliminate their risk of rates rising during the interim period.

So can you explain why *Clydesdale Bank* is now claiming that there are no separate hedging contracts (instruments) and that SOME so-called "**Tailored Business Loans**" only share "*features*" that are similar to hedging contracts {***Contracts for Difference***}?

@CYBG_RemSupGrp

#CYBGclassaction

OPEN LETTER

@DavidDuffyCYBG

@CYBG

David Duffy *{Open Letter #27}* **15 July 2019**

Dear David

Re: 'Hedged Facility' or 'Bespoke Loan'?

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)"

The **Terms and Conditions (T&Cs)** document in **Section 21.1** states:

> " '**Hedged Facility'** means a Facility which is not a Variable Rate Facility"

Borrowers were led to believe that if they accepted the offer of a **Variable Rate Loan** Facility then they would be able to utilise a separate hedging contract {***Contract for Difference***} that could be varied during the term of the **variable rate loan** facility as interest rate movement expectations changed. That is the borrower would be utilising two contracts and not just one.

Contracts for Difference are subject to regulation by the **FCA** {and formerly by the **FSA**}.

However, *Clydesdale Bank* in legal proceedings related to so-called '**Fixed-Rate TBLs**' has claimed that a '**Fixed Rate TBL**' is one of a family of a single contract '**Bespoke Loans**", which are unregulated by the **FCA**.

In that case, why wasn't a Condition like this included in the T&Cs Document?

> " '**Bespoke Loan Facility'** means a Facility which is not a Variable Rate Facility"

To be a valid single contract loan all the **Essential Terms** {*essentialia negotii*} for each type of '**Bespoke Loan**' would need to be included in the offer document {***Facilities Letter***} and then accepted by the borrower.

Also, why didn't ***Clydesdale Bank*** advise prospective SME borrowers that a portfolio of "**Bespoke Loans**" would be available under the "**Tailored Business Loan**" program?

In a Witness Statement dated 28 July 2015, Douglas Campbell from *Clydesdale Bank* testified:

> 3.5 The Bank had a bespoke range of products known by their brand name, Tailored Business Loans (**"TBLs"**). Within this range of products, were Fixed Rate Tailored Business Loans (**"FRTBLs"**), which are not contracts for difference and are therefore not regulated in the same way as IRHPs. This was confirmed by the FCA General Counsel in a letter dated 26 June 2014 to the Treasury Select Committee of the House of Commons (Production 7/191).

@CYBG_RemSupGrp

#CYBGclassaction

OPEN LETTER

@DavidDuffyCYBG

@CYBG

David Duffy *{Open Letter #28}* **15 July 2019**

Dear David

Re: It's all a Matter of Timing

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

The following is an extract of a Summons dated 19 May 2015 prepared by Balfour & Manson LLP for a pursuer's action against *Clydesdale Bank* in relation to a so-called "**Fixed Rate TBL**":

> 4. Following the pursuer's acceptance of the Facility letter of 13th February and the verbal agreement of 14th February with regard to the applicable interest rate, the loan funds were advanced to the pursuer and the facilities continued to be operated by him until they were terminated by the defender in the circumstances hereinafter condescended upon.

There is a simple mistake in this Summons – the second "**of**" should have read "**on**".

That is, the pursuer accepted an offer of a loan facility contained in a facilities letter ON the 13th February {2008} and so a legally enforceable contract was formed BEFORE a purported secondary agreement ON 14th February {2008}.

The applicable interest rate was at a margin to 1M-LIBOR of **2.25%** {plus any mandatory costs}.

That is the pursuer had a legally enforceable **variable rate loan** facility as of 13 February 2008.

The loan offer accepted on the 13 February 2008 was made by the **Financial Solutions** division of *Clydesdale Bank*.

A purported second offer was made on 14 February 2008 by the **Treasury Solutions** divisions of **National Australia Bank (@NAB).** The **NAB Treasury Solutions** division did not manage commercial loans. The **Treasury Solutions** division was involved in dealing with hedging products such as **Interest Rate Swaps** which are **Contracts for Difference**.

On the 14 February 2008, the '*price*' of an **Interest Rate Swap** was quoted – that is a '**Swap Rate'** of **5.55%** was quoted. However, Douglas Campbell in **Open Letter #27** confirmed that there is no ***Contract for Difference*** associated with "**Fixed Rate TBLs**" – Oops!

@CYBG_RemSupGrp

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #29}* **15 July 2019**

Dear David

Re: It's all a Matter of Timing Revisited

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

The following is an extract of a ***Defences*** statement dated 2 April 2015 prepared by **CMS Cameron McKenna LLP** for the Defender's response to an action against ***Clydesdale Bank*** in relation to a so-called "**Fixed Rate TBL**":

4. Admitted that after the pursuer's acceptance of the facility letter of 13 February 2008 and the verbal agreement of 14 February 2008 with regard to the applicable interest rate, the loan funds were advanced to the pursuer. Admitted that the facilities continued to be operated by him until they were terminated. *Quoad ultra* denied.

Again, there is a simple mistake in the ***Defences*** statement – the second "**of**" should have read "**on**".

That is, the pursuer accepted an offer of a loan facility contained in a facilities letter ON the 13th February {2008} and so a legally enforceable contract was formed BEFORE a purported secondary agreement ON 14th February {2008}.

The applicable variable interest rate was at a margin to 1M-LIBOR of **2.25%** {plus any mandatory costs}.

That is the pursuer had a legally enforceable **variable rate loan** facility as of 13 February 2008.

However, the solicitors for ***Clydesdale Bank*** would not be about to correct a serious error in the Summons drafted by the solicitors for the Pursuer – would they!

No doubt you and the Directors of CYBG plc will be hoping that solicitors in other proceedings against ***Clydesdale Bank*** with respect to "**Fixed Rate TBLs**" will fail to see the significance of the timing of the acceptance of an offer for a **variable rate loan** at a prescribed margin to LIBOR and the timing of a purported acceptance of a secondary offer at a LATER date.

This is an very easy mistake to make unless someone points it out.

That is the purpose of this **Open Letter**.

@CYBG_RemSupGrp

#CYBGclassaction

OPEN LETTER

@DavidDuffyCYBG

@CYBG

David Duffy *{Open Letter #30}* **16 July 2019**

Dear David

Re: What TBLs Should Have Been!

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

One way to identify all the defects in so-called "**Tailored Business Loans**" is to look at what these loans should have been in the first place.

Attached is a brochure for what have been called "**Bespoke Commercial Loans**" which do not have the following defects as present in **Tailored Business Loans**:

- Precontract misrepresentation;
- Defective contract formation;
- Ambiguous and confusing terms;
- Excessive complexity;
- Reliance on jargon;
- Lack of pre-agreed early termination clauses {***Liquidated Damages***};
- Demanding and in some cases imposing unjustified "*break costs*";
- Lack of proper worked examples of possible early termination amounts;
- More than one point of contact for customers;
- Lack of properly trained loan consultants;
- Providing false and misleading information to the **Financial Ombudsman Service {FOS}** to conceal these multiple defects;
- Seeking to avoid a proper remediation process by misrepresenting the nature of the loan facilities.

This list may not be complete.

It would appear that the "**Tailored Business Loan**" programme was developed by financial 'boffins' at **National Australia Bank**'s Melbourne head office who were experience in trading "**Contracts for Difference**" but who failed to seek proper legal guidance on how a greater range of interest rate movement protection could be offered to financially unsophisticated SME customers.

The '*chickens are now coming home to roost*' due to that failure.

People will be surprised at why a decision was made to market such a defective financial product in the first place in the United Kingdom – but not in Australia!

@CYBG_RemSupGrp

nab Clydesdale Bank

Bespoke Commercial Loans

Clydesdale Bank is now offering a family of **Bespoke Commercial Loans** for SME customers that provide a much greater degree of interest rate movement protection than other commercial loans while avoiding the need for a second contract involving complex "***Contracts for Difference***" {*hedging instruments*} such as **Interest Rate Swaps**.

The following types of **Bespoke Commercial Loans {BCL}** are now available:

(i) **No limit BCL** - were loan interest is based on LIBOR + Margin + Mandatory costs without any upper or lower limits on interest rate movement protection;

(ii) **One limit BCL** – were loan interest is based on LIBOR + Margin + Mandatory costs with a selectable upper limit where interest payments will not exceed this agreed limit. An insurance premium is payable on this loan option.

(iii) **Two limit BCL** - were loan interest is based on LIBOR + Margin + Mandatory costs with a selectable upper limit where interest payments will not exceed this agreed limit and with a selectable lower limit where interest payments will not fall below this limit. An insurance premium may or may not be payable on this loan option depending on the limits selected.

(iv) **Matching limit BCL** – where the upper and lower selectable limits are the same and where loan interest will be at the selected limit. An insurance premium may or may not be payable on this loan option depending on the limit selected.

Interest payments can be made monthly or quarterly.

A combination of **BCLs** may be utilised over the agreed term of the loan depending on interest rate movement expectation and risk tolerance.

For example, a **One limit BCL** might be selected for the first five years of a 15-year loan facility, with a **No limit BCL** utilised for the remaining 10 years.

This will reduce the cost of the insurance premium for a 5-year **One limit BCL** compared to a 15-year **One limit BCL**.

All **BCLs** have an early termination charge which varies according to the type and duration of the **BCL**.

Pre-agreed formulae are included in the **Terms and Conditions** document so that you and your accountant will be able to calculate these early termination charges.

Our **Commercial Loan Consultants** have undertaken extensive training with these new innovative loan products and will be able to provide further information on these loan such as pricing of the insurance premiums, the selection of limits and providing worked examples of early termination charges based on small, medium and large interest rate movements.

1

PRECONTRACT REPRESENTATIONS

You will be able to alter your loan selection at any time by paying any early termination charge and insurance premiums if applicable.

These innovative **Bespoke Commercial Loans** have been developed in accordance with our motto:

"There will be no surprises when you bank with Clydesdale Bank."

Bespoke Commercial Loans are available for amounts between £500,000 and £5,000,000

Please contact your nearest **Commercial Loan Consultant** from the attached list of regional **Bespoke Commercial Loan** centres to arrange a meeting to discuss your loan requirements.

nab

Clydesdale Bank

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #31}* **17 July 2019**

Dear David

Re: Why Price a Swap when there is no Swap?

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

In a letter dated 21 May 2007 a prospective SME borrower was quoted two "**Swap Rates**" of 6.27% and 6.16% if the borrower wished to have interest rate movement protection for their proposed **variable rate loan** facility.

This table appeared under the heading "**Hedging Strategy Options**".

"Swap Rate"

Fixed Rate

Fixed	Rate	Margin + MLA	All-in-Rate
3 years	6.27%	1.75% + 0.015%	8.035%
5 years	6.16%	1.75% + 0.015%	7.925%

- *Based on first monthly payment*

On the 21 May 2007 1M-LIBOR was trading at 5.65% {Used to determine interest payments on a **variable rate loan** with monthly interest payments}.

DATE	WEEK DAY	ON	1W	1M
21.05.2007	Mon	5.58630	5.60250	5.65000

The difference between the "**Swap Rate**" and the spot LIBOR rate can be considered to be the "*price*" of an **Interest Rate Swap** which is a type of "**Contract for Difference**".

The "**Swap Rate**" is calculated using a complex formula utilising the "**Swap Curve**" and varies with the "**tenor**" {contract period} of the Interest Rate Swap contract {*3 & 5 years in the above example*}.

The "**Margin**" of 1.75% in the table above is the retail margin on the **Variable Rate Loan** facility provided in the offer document {***Facilities Letter***}.

So Mr Duffy, why was a secondary **Interest Rate Swap** contract '*priced*' if there was no intention to enter into a second hedging contract on behalf of the SME borrower?

@CYBG_RemSupGrp

#CYBGclassaction

OPEN LETTER

@DavidDuffyCYBG

@CYBG

David Duffy *{Open Letter #32}* **17 July 2019**

Dear David

Re: Deceiving Lord Doherty - Court of Sessions

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

In legal proceeding brought by one ***Clydesdale Bank*** SME customer whose loan facility had been classified as a "**Fixed Rate TBL**", Lord Doherty was led to believe that ***Clydesdale Bank*** would send an incomplete offer document to a prospective SME borrower such as the outline offer document shown below:

Commercial Loan Offer Document

Lender ID:	✓	*Clydesdale Bank* {Financial *Solutions Division*}
Borrower ID:	✓	Name of Borrower
Principal **Amount**:	✓	3,950,000
Currency:	✓	GBP
Term:	✓	25 years
Interest Rate		{ }

The borrower would then need to contact someone other than the **Financial Solutions** Department representative who sent the offer document to find out what the interest rate would be.

Only then did the borrower then ***accept*** this completed loan offer, which then led to a legally enforceable loan contract.

Lord Doherty was informed:

> On 14th February, 2008 Richard Moore, an employee of the defender in its Treasury Department, telephoned the pursuer and proposed to him a rate of 7.8% per annum on the drawn down funds of £3,950,000 fixed for 25 years.

The inference being that the incomplete offer document had now been completed with an interest rate of **7.8%** completing the **Essential Terms** of the offer document. The borrower (pursuer) then, after being informed of this '*missing*' interest rate, accepted this offer.

However that was *not the whole truth and nothing but the truth* was it Mr Duffy?

@CYBG_RemSupGrp

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #33}* **17 July 2019**

Dear David

Re: Telling Lord Doherty the Truth

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank** (**@NAB**) an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

In legal proceeding brought by one ***Clydesdale Bank*** SME customer whose loan facility had been classified as a "**Fixed Rate TBL**", Lord Doherty should have been told that two offers were made to the borrower (Pursuer}. This was the established procedure for **TBLs** in general.

Offer #1 – Commercial Loan

Lender ID::	✓	***Clydesdale Bank*** *{Financial Solutions Division}*
Borrower ID:	✓	Name of Borrower
Principal **Amount**:	✓	3,950,000
Currency:	✓	GBP
Term:	✓	25 years
Interest Rate:	✓	**2.25%** to 1M-LIBOR

The first offer by the **Financial Solutions** Division was made on 13 March 2008 and accepted on the 13 March 2008.

A second incomplete offer was made on 14 March 2008 after the acceptance of the first offer.

Offer #2 – Interest Rate Movement Protection

Fixed Leg Counterparty:		?
Floating Leg Counterparty:		?
Notional **Amount**:	✓	3,950,000
Currency:	✓	GBP
Tenor {Term}:	✓	25 years
Swap Rate:	✓	**5.55%**

The borrower was advised of the '*price*' or '**Swap Rate**' of a separate **Interest Rate Swap** contract at **5.55%** by the **NAB Treasury Solutions** Department, which specialised in trading "**Contracts for Difference**" {*financial derivatives*}, however no legally enforceable swap contract was ever executed with identifiable counterparties by ***Clydesdale Bank***'s own admission.

@CYBG_RemSupGrp

#CYBGclassaction

@DavidDuffyCYBG

OPEN LETTER

@CYBG

David Duffy *{Open Letter #34}* **19 July 2019**

Dear David

Re: Remediation Claim Forms

From 2001 to 2012 when ***Clydesdale Bank*** (**@clydesdalebank**) was owned by the **National Australia Bank (@NAB)** an "*innovative*" financial product was marketed to small businesses (SMEs) in the United Kingdom that was known as a "**Tailored Business Loan** (**TBL**)".

In fact, this financial product was so "*innovative*" that there were serious flaws in the **Offer Document** {***Facilities Letter***} and associated **Terms & Conditions** document.

Clydesdale Bank has attempted to conceal the fact that SME borrowers classified as having "**Fixed Rate TBLs**" of "**FRTBLs**" in fact had legally enforceable **Variable Interest Rate** loans at a prescribed margin to LIBOR.

This fact has been concealed from the Court of Sessions as well as from the **Financial Ombudsman Service** (**@FinOmbuds**).

Clydesdale Bank has also used '*gaslighting*' techniques so that victims believe a "**loan ticket**" is a contract and not the offer document they signed.

To counter this '*gaslighting*' a **Remediation Claim Form** has been designed so that victims can confirm that they indeed have a legally enforceable **Variable Interest Rate** loan and that a '*price*' for an secondary separate Interest **Rate Swap contract** was quoted, but by the bank's own admission never executed with identifiable counterparties.

A copy of this **Remediation Claim Form** is attached.

A legally enforceable contract is formed if all the **Essential Terms** {***Fundamental Terms***} are included in the offer document which is then accepted.

All the **Essential Terms** for a **Variable Rate Loan** facility were included in the commercial loan offer document prepared by ***Clydesdale Bank's*** **Financial Solutions** Division

All the **Essential Terms** for a purported **Interest Rate Swap** offer were not present and so there was no enforceable secondary **Interest Rate Swap** contract by the bank's own admission. An **Interest Rate Swap** was only '*priced*' with the current "**Swap Rate**" advised to the borrower with the **Variable Rate Loan** contract by the **NAB Treasury Solutions** Department.

Attachment: **Remediation Claim Form**

@CYBG_RemSupGrp

Tailored Business Loan

Essential Terms

Remediation Claim Form

Offer #1 – Commercial Loan

Lender:	***Clydesdale Bank***
	{Financial Solutions Division}
Representatives Name:	____________________
Borrower's Name:	_________________
Principal **Amount:**	_________
Currency:	GBP
Term:	_____ years
Variable Interest Rate:	_____% to 1M-LIBOR

Date of Offer #1: ______ Date of Acceptance: ________

Offer #2 – Interest Rate Movement Protection

	National Australia Bank
	{Treasury Solutions Department}
Representatives Name:	______________
Fixed Leg Counterparty:	?
Floating Leg Counterparty:	?
Notional **Amount:**	________
Currency:	GBP
Tenor {Term}:	______
Swap Rate:	______%

Date of "***Trade Call***" ________