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NAB facing fresh UK loan refund threat

The mis-selling of small business loans in Britain continues to haunt NAB.

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Last month 63-year-old small business operator John Guidi, bankrupted by mis-sold loans, started a hunger strike and slept in a tent outside the Glasgow head office of CYBG, a listed entity created after National Australia Bank demerged Clydesdale Bank and Yorkshire Bank in 2016.

Clydesdale Bank sold small business customers loans with a nasty sting in the tail. **Bloomberg**

Guidi is one of thousands of small business owners who allege they were mis-sold a fixed rate Tailored Business Loan (TBL) through NAB subsidiaries Clydesdale Bank and Yorkshire Bank between 2001 and 2012. They allege it destroyed their businesses, which, all up, totals hundreds of millions of pounds. If consequential damages are included, it is more than £1 billion.

Late last week the fight turned legal when claims management company RGL finally lodged legal action against NAB and CYBG in the British courts, alleging deceit, misrepresentation, negligent misstatement, breach of contract and unjust enrichment. The case is being funded by UK's biggest litigation funder, Augusta Ventures.

The Australian Financial Review can reveal there is a separate legal action brewing. Ian Lightbody, a victim of the bank and a spokesman for a bank victim group, CYBG Remediation Support Group, said he warned CYBG last week a multi-party action would be served in June. He said the initial number of claimants was 200 but was expected to rise to 500. Lightbody said he had indicated to his members in a newsletter sent over the weekend that if the action can attract 500 claimants the charge would be far less than RGL's fee.

NAB, through its Clydesdale and Yorkshire Bank subsidiaries, sold more than 8000 of these loans between 2002 and 2012. The loans, on average, ranged between hundreds of thousands of pounds and £3 million.

The legal action by RGL came days after NAB announced its half year results last week which confirmed that in the past year its compensation bill various misconduct topped $1.2 billion in pre-tax dollars. It was a positive step by acting chief executive Phil Chronican, who is trying to speed up remediation after years of the bank dragging its heels.

A table in its investor presentation titled "Making things right when we get it wrong" estimates that ongoing advice fees received by advice partnerships between 2009 and 2018 was $1.3 billion. Shaw & Partners' Brett Le Mesurier estimates this could blow the remediation bill another $500 million in the next 12 months.

All up the cost of remediation for the big four banks and AMP is heading to $10 billion, says Le Mesurier, which doesn't include any exposure to the legal action in Britain, which RGL says estimates could be hundreds of millions of pounds in direct losses alone and much more when consequential losses are included.

Loan add-ons

How much of that relates to NAB will be determined in the courts. When NAB demerged both banks in 2016 the UK regulator insisted NAB enter a so-called conduct indemnity agreement with the banks to cover any potential losses related to legacy conduct costs not covered by existing provisions it had made. The regulator classified legacy issues as fixed interest TBLs and Payment Protection Insurance (PPI), which cost the industry £40 billion in remediation. PPI is an insurance product that enabled customers to keep repaying loans if they got sick or lost their job. The banks sold it as add-on insurance when customers took out a car loan, credit card or mortgage.

That agreement included a capped indemnity of more than £1 billion that has well been exhausted.

The big question is whether the cap was enough given the amount of claims.

At the heart of RGL's allegations is that Clydesdale Bank mis-sold thousands of tailored business loans to small businesses that had embedded or hidden swaps that were not disclosed to customers.

When interest rates plunged during the global financial crisis, TBL customers with these hidden swaps suddenly found themselves being charged interest repayments that were as much as three times the bank's variable rate. If they broke the contract they were hit with crippling bank fees of up to 40 per cent of the principal of the loan.

RGL alleges these break fees were a deliberate or reckless misrepresentation of a contract which they were not entitled; as well as the deliberate addition of hidden margins into interest charges on fixed rate loans.

The first wave of RGL's litigation represents 148 claimants but the overall group consists of 2000 claimants from England, Scotland and Wales.

A haunting legacy

Not all victims have joined the multi-party actions. Some, including John Glare, is funding his own action. Speaking from Liverpool over the weekend, Glare said a trial date had been set for next year.

"The bank has refused to answer the allegation that the break cost was fabricated and denied that it had pursued me for the break cost, which is of course ridiculous because as events unfolded, the break cost was actually pursued by the bank until it realised that I had no assets available via my bankruptcy in 2011," he said.

Glare signed a TBL for £3.95 million in February 2008 but when he tried to break the loan, the exit fee was a staggering £783,383. His business collapsed, he was evicted and became bankrupt in 2011. He was unaware he had signed up for a complex business loan with a break fee. He lost an initial case and is now trying again.

The TBL scandal is a legacy of NAB's disastrous foray into Britain, which was dogged by years of disappointing financial returns, scandals and reputational damage that earned it the title "death star", a play on NAB's logo.

It is a legacy that will continue to haunt NAB and CYBG until the mess is sorted out and the thousands of victims of these loans reach some form of closure.

CYBG set up a remediation program to assess victims of TBLs, which is ongoing.

The sale of complex TBLs and the financial havoc wreaked on customers like Guidi prompted a parliamentary inquiry into nine banks, including Clydesdale Bank back in 2014.

That parliamentary inquiry produced a damning report in 2015 that found NAB and Clydesdale Banks behaved badly. The report said both banks had mis-sold TBLs, which "led to considerable consumer detriment".

Both CYBG and NAB will fight the legal action. CYBG believes its compensation scheme is transparent and open. NAB said given it was before the courts it was inappropriate to comment.

Speaking from Glasgow over the weekend, Guidi, who is a member of the CYBG Remediation Support Group, said he went on a hunger strike because he was desperate after losing everything and facing the loss of his home of 30 years. "What does a drowning man do? Grabs on to anything he can."

Guidi suspended his protest on May 1 when CYBG said it would try and get a solution to his situation. "Will this happen? I will know in the next week," he said. "I need to get a solution for me and my family failing which I will resume my hunger strike."