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THE SUNDAY TIMES

We will battle on, warn victims of bank mis-selling

Interest-rate swaps brought companies to their knees. Now a settlement offers fresh hope to businesses that believe they were misled

Kiki Loizou Published: 2 August 2015



Breakthrough: Errol Bland has settled his £4.6m case out of court but says he is still out of pocket (Vicki Couchman)

IT HAS been a long, costly fight for Errol Bland. Eight years ago, when Lloyds bank advised him to take an interest-rate swap on the loan he wanted to expand his care homes business, he was told the decision was a no-brainer.

Bankers said the 30-year hedging product would protect him from rising interest rates during the four-year term of his £1.7m loan. But Bland was hit by eye-watering costs when rates sank to record lows during the financial crash.

Since then, he and thousands of other bosses have been fighting for compensation for the losses that, in many cases, have crippled their businesses.

Bland's Coin Group was one of 10,000 companies refused payouts from a compensation scheme set up by the Financial Conduct Authority (FCA). Coin was judged to be a "sophisticated" borrower — able to judge the risks of the swap — because of the size of its assets, and therefore not eligible for a payout.

Convinced he had been wrongly led into the interest-rate swap, Bland took matters into his own hands and instructed lawyers. Last month, he finally settled his £4.6m case against Lloyds out of court. He will be reimbursed £900,000 for interest payments and £200,000 for legal costs. About £3.5m is expected to cover the break fee of the swap.

"Lloyds tried everything it could to create hardship and financial instability for my business," said Bland, 50, who is said to have received the largest publicly disclosed settlement of its kind.

"Lloyds should be spending its resources on supporting businesses and rectifying the problems rather than trying to escape accountability for its mis-selling." He added that the bank had failed to refund £130,000 in overdraft fees he would not have incurred without the swap.

Lloyds denied any wrongdoing. "We have reached a settlement to the satisfaction of all parties concerned. We are pleased that this now concludes the matter for the bank and the customer," it said.

In 2012, the FCA began an investigation following evidence that banks had wrongly lured thousands of companies into complex and costly interest-rate hedging. It set up a compensation scheme, but excluded a third of the 30,000 small and medium-sized companies that were sold the deals on the grounds that they were "sophisticated".

Under the terms of the scheme, the banks decide what, if any, compensation borrowers are offered, with the help of an independent reviewer. Companies complain that this has left them short-changed. Experts predicted the banks would have to pay more than £30bn compensation, but just £1.9bn has been handed to businesses so far. A judicial review of the scheme was ordered earlier this year.

"The 'sophistication test' is not a test of sophistication but a prejudicially mislabelled set of criteria designed to save the banks tens of billions of pounds of compensation owed to small and medium-sized companies," said Ali Akram at Lexlaw, which acted for Bland.

"While Lloyds escaped compensation of millions of pounds in its FCA-backed — but remarkably self-administered — review scheme, the bank was forced to settle our client's litigation claim in order to avoid judicial scrutiny and setting case precedent."

Akram added: "We have seen hundreds of cases and the range of victims is incredible. I have little doubt that there are victims in every single industry."

Adding fuel to the fire, it was recently reported that the Treasury had lobbied the regulator to limit compensation. The Treasury denied the allegation, saying: "The FCA is an independent regulator and as such the government does not intervene or interfere with its work."

Despite criticism and the looming judicial review, the regulator continues to defend the scheme. "We designed a process with small businesses in mind," it said. "We put in place eligibility criteria so we could identify those smaller businesses that were less likely to have understood the risks associated with interest-rate swaps."

Jeremy Roe of Bully-Banks, a lobby group for victims of mis-selling, said: "Only a blind-and-deaf regulator would allow the banks to conduct the scheme in the way it has."

Bland's settlement should offer some encouragement. "Limited companies are often told by solicitors that they face very weak legal prospects for a mis-selling claim," said Abhishek Sachdev at the adviser Vedanta Hedging. "This case should give hope to many small and large firms that believe the risks of their interest-rate swaps were not explained to them."

Many small businesses, however, cannot afford lawyers and are rely-ing on the FCA scheme to make

banks pay up. The struggle continues for one businessman in northern England who is appealing against the redress offered on £5m of loans he took out to expand his property ventures. “We had to sell properties to make the [interest] payments,” said the executive, who asked not to be named. “We sold our best one.”

His bank attached swaps to many products; one five-year loan was transformed into a 20-year product. Break fees amounted to more than £1m. “We were convinced by our bank manager that rates were going to keep rising,” he said. “When the FCA announced its scheme, I was ecstatic because we had been conned by people we trusted. But words cannot describe how I feel about this review process.”

Legal action is not an option, he added: “We have lost enough money as it is.”

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Abhishek Sachdev . . .

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