NAB Criminal Operation Triggers Serious Calls For Royal Commission

Summary:
NAB UK operation just as corrupt as the Australian. Thousands ripped off. Billions could be required in compensation payments.

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NAB's Dream-Destroying 'Death Star' That Is Clydesdale Bank

In the summer of 2010 John Glare hit rock bottom. A financial landmine in his business loan with National Australia Bank's UK-based Clydesdale Bank had spectacularly gone off. It took his business and his home, and forced him into bankruptcy.

It wasn't just the keys to his house and business that he handed over to Clydesdale Bank, it was

almost 30 years of hard toil.

"It was gut wrenching," Glare says. "It was my whole life and it was taken away. I was forced to start life again at the age of 47."

A Fairfax Media investigation into NAB's British operations has revealed staggering admissions from the bank's most senior managers about the way it deliberately skirted consumer protection laws to flog complicated loans backed by incomprehensible disclosure documents.

Armed with fresh and damning findings from a parliamentary inquiry there are now thousands of victims tallying compensation claims worth potentially billions of dollars. They are baying for justice.

Glare is one. He bought a majestic 400-year-old country manor house in Dorset in 2002 for £4.5 million ($8.7 million). It was a fairytale come true. Within three years he had converted it into a Christian resource centre and a reception house for weddings.

But things unravelled shortly after he signed a Tailored Business Loan (TBL) for £3.95 million with Clydesdale in February 2008.

What he didn't know was that NAB – which entered the UK market in the 1980s with the purchase of banks including Clydesdale Bank and Yorkshire Bank – was on an aggressive "organisational" drive.

It wanted to lift profits and boost its market share. This meant signing up new customers and getting more out of existing ones.

There are various types of TBL, ranging from straight forward to highly complicated derivatives, sold to thousands of customers with little explanation of the risks – or the break fees to exit the loans early.

Even David Thorburn, who resigned as chief executive of Clydesdale in January, has admitted that the relevant terms and conditions letters of TBLs would not pass a plain-English test.

He went further, conceding TBL customers could not reasonably have anticipated the costs to which they had exposed themselves.

When interest rates plunged during the GFC, TBL customers like Glare were left saddled with interest repayments as much as three times the bank's variable rate.

It was a catch-22. If he stayed with the loan his repayments were £20,000 but – unlike a normal fixed rate loan where penalties are generally less than 5 per cent of the principal – if he broke the TBL contract the fee was £783,383.

"I was stunned," he says, noting that fee represented 20 per cent of the principal of the original £3.95 million loan.

Thousands of small businesses such as Glare's got caught up in a wider banking scandal that hit the UK involving business loans with standalone interest rate hedging products (IRHPs). Clydesdale Bank and Yorkshire Bank sold standalone IRHPs as well as loans with embedded swaps under the TBL brand.

The products were similar but loans with embedded interest rate hedging facilities aren't regulated.

Some customers had been charged up to 40 per cent to break their loan agreements. Some had no idea they had signed a contract laced with derivatives.

The products, and the devastation they caused, prompted an investigation by the financial regulator and a parliamentary inquiry into nine banks, including Clydesdale.

The parliamentary inquiry report, released last week by the Treasury Committee, found that NAB

behaved badly.

The bank had mis-sold tailored business loans (TBLs) to small business owners, which "led to considerable consumer detriment".

Customers were kept in the dark about the risks.

The bank structured the products to deliberately avoid regulation – it meant less paperwork and of course little or no recourse for the customer when things went pear-shaped.

It left the authorities "powerless to enforce compensation for customers to whom products were mis-sold".

The Treasury Committee chairman Andrew Tyrie said: "This gap in the regulatory perimeter meant that the product created by Clydesdale Bank was not covered by the usual safeguards ... Some [customers] were probably unaware that the product fell outside the scope of FSMA [Financial Services Markets Act]. Regulators have been powerless to provide redress to those affected by wrongdoing."

Even the subsequent attempt to make amends was slammed. The committee found a "lack of public oversight, minimal transparency and limited coverage of the [compensation] scheme" meant the committee could not have faith in the process.

It was referring to NAB's voluntary review of some customers of TBLs.

The numbers seem to back the finding. Clydesdale sold 11,271 TBLs in the decade up to mid-2012. Of those, 8372 are unregulated. The bank would not disclose how much compensation has been paid to customers of its TBLs but last year it told Parliament it was assessing 550 customers and compensation paid was less than £10 million.

The bank admits to mistakes.

Former boss David Thorburn admitted during a parliamentary inquiry in 2014 that rapid growth ahead of the GFC meant staff sometimes "overstepped the mark".

Whistleblowers go further. Patrick Walton, a former managing partner of Clydesdale's financial solutions centre, says the pressure to meet targets and make bonuses created a culture that was the most "corrosive and threatening".

"There was pressure to sell at all costs that was driven from the top of the organisation," he says.

NAB chief executive Andrew Thorburn, who is no relation to David, told BusinessDay he had read the powerful British Treasury Committee report into mis-selling of business loans to SMEs, including a specific recommendation that Clydesdale Bank and Yorkshire Bank overhaul their internal review compensation scheme.

"It made a specific recommendation to us and I said to our team we should consider that. We have got to step back from this and make sure we are doing the right thing and doing it in a disciplined and proper way although we don't have to respond to it immediately."

Then there is the damage to the bank's own finances, a topic of keen interest to local investors.

NAB's cumulative provisions for interest rate hedging products to the end of last financial year was £431 million.

Thorburn, who took the top job at NAB last August, reiterated the bank's priority to exit the UK as soon as practicable.

It won't be easy.

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"I was there last week. When you read the issues that are coming up and in the financial and other press and talk to regulators you can see it is a really tough market and it reinforces my view we must move to exit in a disciplined and proper way," he said.

"I do think we have a stronger business today than a few years ago. Performance is better, strategy is clearer and cleaner and management is better."

Issues include another British industry-wide scandal, the mis-selling of payment protection insurance (PPI), which has cost the industry billions of dollars in compensation. In its 2014 financial accounts, NAB booked an additional £515 million provision for claims of potential mis-selling of PPI to its British customers, and another £49 million provision for other "conduct-related matters".

BBY banking analyst Brett Le Mesurier describes NAB's UK banking arm as the "Death Star". It was a phrase he first coined in 2004.

More than a decade later, with a string of losses under its belt, bulging provisions, a runoff portfolio and a damaged reputation, it seems more apt than ever.

Whistleblower Not Surprised

For victims like Glare, Jim McGrory, David Farndon and his 83-year-old mother, who has Alzheimer's and is gripped by fear that she will lose her home, the bank's decision to exit the UK is a worry.

McGrory, a hotelier of 40 years from St Andrews, Scotland, says his problems with Clydesdale have taken over his life. Three years after entering a loan of £562,000 with Clydesdale, which he believed was a straight fixed business loan without a derivative component, he tried to re-finance with Lloyds. He was quoted an £18,000 break fee by the Clydesdale manager. He was then told it was £88,000, or 18 per cent of the loan.

It cost him a property in Canada – a photo of which hangs on the wall of his house as a reminder of what he lost – and a student rental property in St Andrews. Rooms in his house are strewn with paperwork as if to show visitors that Clydesdale Bank is pervading every bit of his life. Every day he climbs through a hatchdoor hidden in his laundry cupboard to reach a cellar jam-packed with boxes of paperwork to continue his six-year fight.

McGrory complained to the Financial Ombudsman in 2009. It was initially rejected. He appealed the case and won in September 2013.

The adjudication said the overpayment of interest, £125,000, should be refunded. He is seeking consequential damages of £500,000. The bank is yet to pay him anything because it wants him to sign an agreement that will close the case and therefore prevent him chasing consequential damages. He has asked the bank to settle and carve this out but it refuses to agree.

On March 18 he hit a roadblock when Debbie Crosbie, acting CEO for Clydesdale Bank, told him, "In the absence of any new information from you, I can't see any merit in another meeting … we must both await the outcome of the final determination from FOS [in relation to consequential losses caused by the TBL]."

McGrory says he has no life until the matter is settled. "I have been doing this for six years but there are many others like me. I'm not doing the violin case, some are worse off than me," he says.

The bank's behaviour in the UK, the numerous reports of its poor treatment of customers and lack of transparency in how it is dealing with various mis-selling scandals, has again raised some serious questions about the culture in the bank.

None of this surprises the NAB whistleblower who recently blew the lid on a scandal in the bank's

wealth division in Australia with a cache of internal documents showing a division plagued by multiple highly rated internal risks and a remuneration structure that has nurtured a culture of covering up bad news.

"The revelations in the UK are merely an extra nail in NAB's proverbial 'cultural coffin' and is further evidence of wide-scale, systemic cultural and operational dysfunction extending beyond NAB Wealth," the whistleblower says.

"This is what happens when a 'path to least resistance' approach is adopted to risk management in a commercially aggressive sales environment where incentives are rewarded accordingly – new products are developed and implemented without effective people, process and technology controls designed to mitigate customer loss and regulatory scrutiny."

He says matters are made worse for NAB and customers when the bank refuses to be transparent to customers, the public and regulators when things go bad.

"The regulator only investigates, and indeed the public is only made aware, when whistleblowers go directly to the media.

"I would go as far as to say there is an 'unconscious bias' towards risk managers in NAB. This goes to the heart of the message of the 3-star Audit Issue imposed on former NAB Group CEO, Cameron Clyne, by internal audit [in 2010]," he says.

It was an issue first raised a decade ago when the forex rogue trading scandal erupted, where four traders, on the hunt to get big bonuses, falsified records to cover up mounting losses totalling $360 million. It cost NAB's chief executive and chairman their jobs. The bank took a hard look at itself, particularly after the prudential regulator APRA wrote a report that found "risk management controls were seen as trip-wires to be negotiated".

The bank whistleblower says the culture didn't change.

The more recent NAB Wealth scandal, which includes forged client signatures, the doctoring of client files, poor advice and secret compensation payouts with gag orders, follows a similar scandal in Commonwealth Bank and Macquarie Private Wealth.

Jeff Morris, the man who blew the whistle on a financial scandal inside CBA's financial planning division in October 2008, says it is a culture that puts customers last, not first.

"Globally, we have now had about three decades of the 'greed is good' culture in financial services. The mis-selling of these loans by NAB in the UK is very similar to the mis-selling of foreign currency loans by CBA and Westpac in Australia in the 1980s. In fact there isn't much difference to the recent NAB and CBA financial planning scandals: the common element being a corrupted view of financial services as primarily a sales process, where probity takes a back seat. Excessive short-term, sales-based bonuses for management and staff are the root of the problem. When things go wrong, the managers responsible flit off to another institution and the shareholders are left holding the baby and paying out the compensation," Morris says.

Over the decades there has been a revolving door of executives between the UK and Australia, including former NAB chief executive John Stewart, who came from its UK operations.

The various mis-selling scandals in Britain have resulted in a number of support groups forming, including the NAB Customer Support Group, which was launched by Glare in 2012 and now has more than 130 members, and Bully-Banking (which supports victims of financial institutions, including NAB). Bully-Bank director Fiona Sherriff says the fixed TBLs Clydesdale sold to customers were "disgraceful".

"They are trying to get away with paying as little as possible."

Another group, Global Advisory Group, set up by Glenn McDowall, an Australian now living in Britain,

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says Clydesdale is one of the worst offenders of all banks since 2006.

"NAB in the UK has been an utter shambles, right from the start," he says.

Glare is living proof. After being evicted in June 2010, he packed up the rest of his belongings and moved to Liverpool, where he was forced to stay with friends until he could get back on his feet.

He submitted a complaint to the Financial Ombudsman Service in October 2010, which was rejected outright the following February on the basis there were warnings printed on the facility letter that break fees on TBLs could be "substantial".

But Glare was not about to give up. He applied to FOS to get a copy of his file. In 2012 a box of documents appeared, including some bombshell internal emails between Clydesdale Bank and nabCapital, which put everything into perspective.

"The emails made me realise that it was the bank's wrongdoing that caused my ruin, not the economic downturn," he says.

"When I think back to the last year before my eviction, it was a daily battlefield. One month I had to explain to staff that their pay would be paid a week late, the next month it was two weeks late. Some staff left, others failed to turn up to work saying they couldn't afford to pay for the petrol. I had to explain to couples that their receptions were cancelled. I had to explain to churches and Christian groups that their conferences were cancelled."

Last year he had his first big break when the bank admitted it had mis-sold him the loan and agreed to settle all the damages he can prove.

Since then he has launched a £6 million personal lawsuit, claiming consequential damages relating to the loss of his business and home. The trial begins in August and Glare is prepping himself for the next round.

In the face of all of this. It would seem bad banking is the norm.

Not so, says Andrew Thorburn.

"Do I think we have systemic issues in NAB? No I don't. Do I believe we need to get better at processes, automation and handling customer complaints better and have simpler products and services? Yes I do.

"We have a complex large institution and we do a lot of things right. Banking still to me is still an honourable profession. We do so many good things."

Websites For More Information: NAB's Dream-Destroying 'Death Star' That Is Clydesdale Bank
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