

Lloyds faces court over ‘evasion’ of rules

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Lloyds bank argues that a payment arising from the FCA compensation scheme does not amount to an admission of mis-selling

Lloyds Banking Group has been accused of relying on contractual clauses to try to “evade” regulations governing the fair treatment of customers.

A dispute in the High Court starting in June will examine whether [Lloyds](#) is entitled to use [small print](#) in its loan contracts to avoid rules designed to protect borrowers.

Jason Schofield, a property developer, is seeking “consequential loss” damages of £6 million, which he claims arise from mis-sold interest rate swaps.

Swaps are derivatives products that were mis-sold to tens of thousands of small business owners. They were supposed to hedge against interest rate rises, but customers were not warned of the high monthly fees they would pay if interest rates fell. When they sank to record lows in the wake of the financial crisis, many companies were ruined.

Under a compensation scheme ordered by the Financial Conduct Authority, Mr Schofield, 57, received an undisclosed redress payment from Lloyds for direct costs associated with three swaps sold to him alongside loans from Bank of Scotland, part of Lloyds.

However, when he sued the bank for the alleged knock-on effects of the swaps, it noted contractual clauses that meant Mr Schofield effectively had agreed that the bank was not offering him any advice on the merits of the swaps. It also claimed that it had not breached any regulatory requirements.

He has pointed to financial regulations, which he claims mean that a bank cannot contractually exclude itself from regulatory obligations to private customers, including a requirement to clearly explain the nature of products.

Most swaps cases have been between banks and small companies or their liquidators. Commercial lending is not regulated. Mr Schofield entered into the swaps in his own name and is pursuing the bank on a personal basis.

His lawyers argue that the bank's contract provisions are "inconsistent with [its] duty to comply with the rules". They argue that Lloyds cannot use small print to "obviate its statutory duties, including . . . to provide clear, fair and not misleading information; to ensure that it had sufficient relevant information about the customer; and to ensure the product is suitable for the claimant".

Kevin Hollinrake, co-chairman of the all-party parliamentary group on fair business banking, has written to António Horta-Osório, Lloyds' chief executive, to express his concerns that the bank "appears to be operating in a questionable manner" in the case.

In the letter, he says: "The issues raised in this case may have wider regulatory and conduct implications. Our concern is that by employing this kind of defence, the bank is attempting to evade its responsibilities under [rules] which preclude a firm from contractually restricting its duties to retail customers."

Lloyds argues that a payment arising from the FCA compensation scheme does not amount to an admission of mis-selling. A spokeswoman said that the bank always tried to "explore all options to resolve complaints before litigation is commenced and is willing to consider all opportunities for a mutually satisfactory commercial compromise throughout the litigation process. Regrettably, on this occasion the matter will need to be decided by the courts."