

TYPES OF CONSEQUENTIAL LOSS THAT WILL BE CONSIDERED BY THE BANK BASED UPON AN UPHELD COMPLAINT		
	Illustration of a claim with supporting evidence	Illustration of a claim with insufficient evidence
<p>1. Loss of profits: new business opportunity Where a business suffered a loss of profits in relation to a lost business opportunity, it can make a consequential loss claim for that loss.</p> <p>In order to make a successful consequential loss claim for loss of profits, a business would need to evidence that there was a specific and concrete opportunity available at the time that had to be forgone as a consequence of the unfair actions of the bank, for which a complaint has been upheld, and/or Direct Loss. The business must evidence that the loss of profits was caused by the unfair actions and/or the Direct Loss rather than extraneous factors, such as economic climate.</p> <p>Claims are more likely to succeed if they are supported by evidence of the following nature:</p> <ul style="list-style-type: none"> • evidence of a specific and concrete opportunity that was available to the business at the time • contemporaneous correspondence documenting the opportunity that was forgone • evidence of a causal link between the unfair actions of the bank and/or the Direct Loss and failure to pursue the new business opportunity e.g. impact on the cash flow position at the time • evidence that a similar opportunity has now been undertaken at a later date when funds were available • evidence to support additional profits that were forgone at the time e.g. increased demand, new supply orders <p>When considering any claimed causal link between an impact on cashflow of the business and claimed loss of profits, the bank will have regard to other cash requirements at the time that would ordinarily require prioritisation e.g. HMRC arrears.</p>	<p>Business A claimed that it suffered a loss of profits due to a delay in adding a business conference room to its hotel, which it has now undertaken. It claimed that it would have built the conference room in 2011.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> • Architect drawings, builder quotes and approved planning permission from 2011 (specific and concrete evidence of intent and opportunity at the time) • Revised cash flow demonstrating that the business would have had sufficient funds to have undertaken the build in 2011 had the Direct Loss and unfair actions of the bank, for which the complaint has been upheld, not occurred (evidence indicating a causal link) • Email exchange between the business and the bank discussing the intention to build a conference room (contemporaneous correspondence) • Details of actual costs incurred in undertaking the build (evidence that the opportunity has now been undertaken) • Evidence of the additional profits generated from the business conferences that have taken place 	<p>Business B claimed that it was prevented from undertaking a joint venture with another entity to build a residential development in 2009 and suffered a lost opportunity to receive 20% of the sales price of the completed properties.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> • Current statement from the director confirming that the opportunity had been available in 2009 • Current marketing brochures of the completed development with sales prices of the properties <p>The business did not provide sufficient evidence to demonstrate:</p> <ul style="list-style-type: none"> • There was a specific and concrete opportunity that was available to the business and forgone in 2009 • A causal link between the unfair actions of the bank and/or the Direct Loss and the lost opportunity at the time <p>The claimed opportunity is speculative with no concrete evidence.</p>

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<p>Claims are more likely to fail if the only evidence provided is of the following nature:</p> <ul style="list-style-type: none"> • a statement of a speculative or generic opportunity i.e. not specific and concrete • a statement of a speculative return above the 8% simple interest already included <p>Claims will be unsuccessful if the lost profit was still less than the 8% simple interest already received. It is therefore recommended that businesses first consider whether they have already been compensated for the loss.</p>	<p>at the hotel since the room was added (evidence that the opportunity has led to increased profits)</p>	
<p>2. Loss of profits: grossing up of business profits</p> <p>A business that wishes to make a claim for a consequential loss based on grossing up of business profits should be aware that such claims are unlikely to succeed unless the additional demand can be demonstrated.</p> <p>For example, a claim for lost profits simply on the basis that, in the absence of the Direct Loss/unfair actions of the bank, additional stock would have been purchased, will not be successful. In this case, while a higher volume of stock may have been purchased, this does not demonstrate an increased level of stock would have led to additional profits being generated, as there would need to be demand for the increased stock.</p> <p>Claims are more likely to succeed if they are supported by evidence of the following nature:</p> <ul style="list-style-type: none"> • evidence of a specific and concrete sales opportunity at the time • contemporaneous correspondence documenting the opportunity that was forgone • evidence of a causal link between the unfair actions of the 	<p>Business C sold computer equipment and claimed that it would have been able to purchase and sell 2,000 monitors instead of the 1,000 that were actually purchased and sold. Computer monitors cost £100 each and profit margins were 20% therefore the business claimed it would have generated an additional £20,000 of gross profit.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> • Correspondence from the client at the time which confirmed that they were looking to purchase 2,000 monitors to set up a new office but would accept the maximum number the business could provide (contemporaneous evidence of demand for the additional stock) • Copy of the invoice for the sale of 	<p>Business D sold bicycles and claimed that it would have been able to purchase £100,000 of additional stock to sell and since profit margins were 20% it would have generated an additional £20,000 of gross profit.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> • Financial statements for the last 5 years demonstrating a gross profit margin averaging 20% <p>The business was not able to demonstrate that there was a demand for the increased stock levels at the time.</p> <p>The claimed loss of profit is speculative with no concrete</p>

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<p>bank and/or the Direct Loss and failure to fulfil the demand e.g. insufficient cash to purchase stock, which would otherwise have been available at the time</p> <ul style="list-style-type: none"> evidence to support additional profits that would have been generated e.g. increased demand, new supply orders <p>When considering any claimed causal link between an impact on cashflow of the business and claimed loss of profits, the bank will have regard to other cash requirements at the time that would ordinarily require prioritisation e.g. HMRC arrears.</p> <p>Claims are more likely to fail if the only evidence provided is of the following nature:</p> <ul style="list-style-type: none"> a statement of a speculative or generic opportunity i.e. not specific and concrete a statement of a speculative return above the 8% simple interest already included <p>Claims will be unsuccessful if the lost profit was still less than the 8% simple interest already received. It is therefore recommended that businesses first consider whether they have already been compensated for the loss.</p>	<p>1,000 monitors to the client (evidence of actual sale)</p> <ul style="list-style-type: none"> Financial statements for the last five years demonstrating a gross profit margin averaging 20% (evidence to support the quantification of loss) 	<p>evidence.</p>
<p>3. Loss of profits: opportunity to acquire assets</p> <p>A business that was restricted from acquiring assets as a result of the unfair actions of the bank and/or Direct Loss can make a consequential loss claim.</p> <p>Example asset acquisitions and associated losses include:</p> <ul style="list-style-type: none"> property: lost capital appreciation, lost rental income, lost development opportunity plant and machinery: lost hire rental income, lost business 	<p>Business E operated a construction company and claimed that it was only able to purchase sufficient plant and machinery to accept one but not two contracts with a client. The business therefore suffered loss of profits.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> Emails with the client 	<p>Business F, a property investor, claimed that due to the Direct Loss it was denied the opportunity to use the funds as deposits to purchase and sell more properties.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> A statement of the amount of

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<p>opportunity</p> <p>Claims are more likely to succeed if they are supported by evidence of the following nature:</p> <ul style="list-style-type: none"> evidence of a specific and concrete opportunity that was available to the business at the time contemporaneous correspondence documenting the opportunity that was forgone evidence of a causal link between the unfair actions of the bank and/or the Direct Loss and failure to pursue the asset acquisition e.g. impact on the cash flow position at the time evidence that a similar opportunity has now been undertaken at a later date when funds were available <p>When considering any claimed causal link between an impact on cashflow of the business and claimed loss of profits, the bank will have regard to other cash requirements at the time that would ordinarily require prioritisation e.g. HMRC arrears.</p> <p>Claims are more likely to fail if the only evidence provided is of the following nature:</p> <ul style="list-style-type: none"> a statement of a speculative or generic opportunity i.e. not specific and concrete a statement of a speculative return above the 8% simple interest already included <p>Claims will be unsuccessful if the lost profit was still less than the 8% simple interest already received. It is therefore recommended that businesses first consider whether they have already been compensated for the loss.</p>	<p>demonstrating that there were two contracts available to them at the time (evidence of demand for the additional plant and machinery at the time)</p> <ul style="list-style-type: none"> Difference in costs of the relevant plant and machinery required to undertake one and both contracts by reference to the impact on cashflow (evidence indicating a causal link) Details of the actual costs incurred from undertaking the one contract and the additional costs that would have been incurred (including economies of scale) had both contracts been undertaken (evidence to support the quantification of loss) Details of the contract that was undertaken and the profits generated from it (evidence to support the quantification of loss) 	<p>Direct Loss and how it equalled a deposit amount towards property purchases</p> <p>The business has not demonstrated:</p> <ul style="list-style-type: none"> There were specific and concrete property purchases available at the time Evidence that it would have been able to secure the required additional lending at the time to have purchased more properties

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<p>4. Asset disposal</p> <p>A business that had to dispose of assets as a result of the unfair actions of the bank and/or Direct Loss can make a consequential loss claim.</p> <p>Example assets and associated losses include:</p> <ul style="list-style-type: none"> property: lost capital appreciation, lost rental income, lost development opportunity plant and machinery: lost hire rental income, lost business opportunity <p>Claims are more likely to succeed if they are supported by evidence of the following nature:</p> <ul style="list-style-type: none"> details of the asset sold, the time and the proceeds received details of the use of the proceeds evidence of a causal link between the unfair actions of the bank and/or the Direct Loss and the need to sell the asset at that time to raise funds evidence of the return achieved from the asset in the period immediately prior to the sale evidence that the asset sale was forced i.e. not part of a wider business strategy at the time <p>When considering any claimed causal link between the unfair actions of the bank and/or the Direct Loss and the need to sell the asset, the bank will have regard to other cash demands at the time e.g. HMRC arrears.</p> <p>Claims will be unsuccessful if the loss was still less than the 8% simple interest already received. It is therefore recommended that businesses first consider whether they have already been compensated for the loss.</p>	<p>Business G claimed that it had to sell a property as part of an asset disposal caused by the unfair actions of the bank.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> Revised cash flow demonstrating the additional funds that would have been available to avoid sale but for the unfair actions of the bank (evidence indicating a causal link) Completion statement with details of the property sale including date, price and net sales proceeds (evidence indicating a causal link) 	<p>Business H ran a plant hire business. It stated that it was forced to sell equipment because of Direct Loss and therefore claimed for the lost profits from not being able to hire out the equipment.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> Evidence of the asset being sold at auction two years after the Direct Loss was suffered Price list from their website demonstrating the charges for hiring out the asset Calculation of the lost profits based on an estimated number of hire out days multiplied by the hire day charge <p>Whilst the business demonstrated that equipment was sold and how the loss of profits have been calculated there is no evidence to support:</p> <ul style="list-style-type: none"> A causal link between the Direct Loss and the disposal of the asset (due to the time period between the loss and the asset being sold) The asset would have been hired out at the estimated number of days

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<p>5. Increased cost of borrowing</p> <p>A business can make a claim for consequential loss when it has incurred increased costs of borrowing as a result of the unfair actions of the bank and/or Direct Loss. For example, where it had to borrow money to meet payment of a Direct Loss (e.g. a Property Participation Fee or default interest) or refinance externally with another lender at a higher cost due to the bank's unfair actions.</p> <p>Claims are more likely to succeed if they are supported by evidence of the following nature:</p> <ul style="list-style-type: none"> • evidence that it was the unfair actions of the bank that made the additional borrowing necessary • details of the amounts borrowed and the costs of borrowing • dates of the loans and/or refinancing • dates and evidence of the repayment of the borrowing • relevant loan and/or refinancing agreements <p>Claims will be unsuccessful if the increased cost of borrowing was still less than the 8% simple interest already received. It is therefore recommended that businesses first consider whether they have already been compensated for the loss.</p>	<p>Business I claimed that it took out a temporary loan from another lender in order to meet payment of a Direct Loss in 2010.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> • Revised cash flow demonstrating that it would have had sufficient funds and not required the additional loan in 2010 (evidence indicating a causal link) • Evidence that the loan was used to pay the Direct Loss (evidence indicating a causal link) • Loan agreement detailing the amount borrowed, the terms of the borrowing including repayment date, arrangement fee and interest costs (evidence to support the quantification of loss) 	<p>Business J claimed that it had to refinance their debt with another lender due to the unfair actions of the bank.</p> <p>The following evidence was provided:</p> <ul style="list-style-type: none"> • Refinancing terms with the new lender that show lower rates of interest and no arrangement fee <p>Whilst the business may have had to refinance as a result of the bank's actions, it has not demonstrated that it has suffered a loss since the interest rates with the new lender are lower than those that were in place with the bank.</p>
<p>6. Legal and professional fees</p> <p>Should a business wish to claim for professional fees incurred in relation to the complaints process then it will need to provide detailed information on the specific nature of the services provided, the cost incurred for each of the services and how these services were required as a result of the complaints process. We will consider the particular business's circumstances and assess whether it is fair and reasonable for the business to have obtained legal/professional advice on aspects of the complaints process. A business should provide the following</p>	<p>Business K supplied copies of invoices that included detailed narrations of each task performed in relation to the complaints process and proof of payment.</p>	<p>Business L supplied copies of invoices that do not give specific detail of the services provided.</p>

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evidence: <ul style="list-style-type: none"> • details of scope of services provided, including itemised list of each task including: <ul style="list-style-type: none"> ○ description of task performed ○ time spent on task ○ applicable rate charged ○ cost of task (applicable rate multiplied by the time spent) • copies of invoices • evidence of payment 		