

# FCA's 15-month interest-rate swap redress review to hinder claims, say industry officials

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Any findings from the Financial Conduct Authority's (FCA) announced [15-month lessons learned review](#) of its supervisory intervention on interest rate hedging products (IRHP) will come too late for victims to pursue compensation through the courts.

**Democratic Unionist MPs are disappointed the lessons learned's initial terms of reference did not explicitly state cases found to have been mishandled by or improperly excluded from the original scheme would be eligible for the upcoming Dispute Resolution Scheme (DRS). They will ask the FCA to consider updating the terms of reference to reflect the same as that remains consistent with their prior stated position in relation to the redress schemes. Many MPs would share such a view, according to the DUP, which provides the minority Conservative government with its parliamentary majority.**

The terms of reference states "it is not intended to be a route by which the redress scheme or individual cases can be re-opened; nor is it intended to assess the appropriateness and reasonableness of individual offers". A spokesman for the FCA said the regulator would not change this aspect of the review.

**"It would be incongruous to find there were lessons learned and not address appropriate groups of cases on that basis," a DUP spokesman said. The party will continue to fight for any such groups of cases to be eligible for the DRS where the published FCA lessons learned report confirms from the evidence that is appropriate, fair and reasonable.**

**"We recognize that may not be until 2020, but it remains the right thing for the banks and the FCA to do," the DUP spokesman said.**

Separately, HM Treasury's role in enhancing the original scheme's sophistication criteria has been further criticised. The role of Sajid Javid MP (Con), now home secretary, in expanding that criteria when he was at the Treasury earlier in his career, has come under scrutiny.

## **FCA repeating mistakes**

"Fifteen months is too long a period. The initial review process was predominately finished two years ago. It's now 2019, what the heck has the FCA been doing? By the time this review is complete there will be no SMEs left within the limitation period for litigation," said Abhishek Sachdev, chief executive at derivatives consultancy Vedanta Hedging in London.

The 15-month period on lessons learned could be especially damaging for Lloyds Banking Group customers who are still pursuing claims through the courts, Sachdev said.

The IRHP redress scheme failings are well known and could be reported on in 90 days. Furthermore, the lessons learned terms of reference should not be considered to be set in stone, he said.

"The 15-month deadline reflects the large number of firms involved, the likely level of stakeholder engagement, the amount of documentation and the complexity of the issues," a FCA spokesman said.

"The FCA is repeating the same mistakes it made during the review. It published the initial redress agreements far too late and only because the Treasury Select Committee forced it to. By then it was already too late to help SMEs that had already been through the review process," Sachdev said.

The redress scheme began in May 2013, but it was not until February 2015 when the FCA published the agreements it had signed with banks about the scheme's parameters.

## **HM Treasury's role in setting sophistication threshold criticised**

The FCA has appointed John Swift QC to lead the review which will look at the FCA's approach to technical issues, particularly the enhanced sophistication criteria introduced by Javid during his stint in different roles at Treasury (2011-2014).

Javid enhanced the sophisticated investor criteria after the initial scheme pilot to include groups of connected clients (known as [BIPRU 10.3](#) groups) and non-BIPRU customers where the aggregated notional value of all interest rate hedging products held, in existence at the time of the particular sale being assessed and held by the customer across the groups was greater than £10 million, the customer will be deemed to meet the sophisticated customer criteria.

A [letter](#) sent by Clive Adamson, then the FCA's director of supervision, conduct business unit, to firms on January 29, 2013 confirmed the post-pilot enhanced sophistication criteria and confirmed Treasury was involved in making changes to the IRHP review scheme.

"The categorisation of ALL customers, including whether or not they were a subsidiary of a larger company, part of a larger group, an SPV — any of the reasons customers would not be eligible for the IRHP review would have been established when the account for the customer was opened by way of appropriate know-your-customer procedures undertaken," said Paul Carlier, a financial markets consultant at Jupiter 87 in London.

Client categorisation would have been established and checked when necessary credit

assessment undertaken for the sale of the IRHP and should have been established as part of the comprehensive review of each case during the IRHP review process itself, Carlier said.

"There is simply no way these 'categorisations' were either not already known for every customer, or would not have been established on the case by case basis during the IRHP review," Carlier said.

That addition to the sophistication criteria reduced banks' total exposure from about £15 to £20 billion to the £2.2 billion ultimately paid in redress.

MPs Guto Bebb (Con), Tess Munt (Lib Dem) as well as Vedanta's Sachdev tried to persuade Javid privately to ditch this approach, but it was included nonetheless. A Treasury spokesman did not return calls.

### **Connaught Review announced**

The FCA also announced Raj Parker, a barrister at the Matrix Chambers, will undertake the review of the regulation of firms involved with the Connaught Income Fund Series 1, which is expected to last nine months.

"The review will not prejudice the remaining aspects of the ongoing enforcement investigation," the FCA said in a statement.

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