

04 January 2023

Final report by the Complaints Commissioner**Complaint number 202201656***The complaint*

1. Your complaint relates to the Financial Services Authority (FSA) and FCA's supervisory intervention on Interest Rate Hedging Products (IRHPs).

What the complaint is about

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that it is about how your bank has handled your Interest Rate Hedging Product (IRHP) mis-selling review. You told us that you have read the Lessons Learned Review by John Swift and have said that 'there were clearly flaws in how our case was assessed by the Bank and KPMG (as your Skilled Person)'

What the regulator decided

3. The FCA did not investigate your complaint. It said:
4. 'Your complaint relates to the actions or inactions of your bank, specifically the way they have reviewed the sale of your IRHP. You have quoted John Swift's Review as evidence that the bank's review in your case reached the incorrect outcome. That is not something we are able to investigate under the Complaints Scheme because your complaint is not about the FCA's actions or inactions, but rather the actions of your bank.
5. The Lessons Learned Review's purpose was to examine the quality and effectiveness of the supervisory intervention including judgement the Financial Services Authority (FSA) and the FCA made in relation to securing redress for SMEs. The Review was not intended to be a route by which the IRHP Redress

Scheme or individual cases can be re-opened; nor assess the appropriateness and reasonableness of individual offers.

6. The FCA's role in the IRHP Redress Scheme was not and is not to review individual cases, including where there is a disagreement over the outcome. Under the terms of the IRHP Redress Scheme, each case was reviewed by the relevant bank according to the terms of the IRHP Redress Scheme. This process was independently overseen and verified by a skilled person appointed under section 166 of the Financial Services and Markets Act 2000 (FSMA). If consumers were unhappy with the outcome reached by their bank in the review, they could have approached the Financial Ombudsman Service (if the SME eligibility criteria was met) or have taken independent legal action.'

Why you are unhappy with the regulator's decision

7. You have said to me:

I believe that this decision is entirely inconsistent with the recommendations approved by the FCA Board on the 26 May 2022.

Section 7.6 iii states:

'The FCA's guidelines for its general approach would be that it would not expect to pay compensation for financial loss for upheld complaints but would review each complaint with an open mind and consider the issues on individual merits.'

The approved approach is clear and not mis-leading; the FCA are to review each complaint with an open mind and consider the issues on individual merits. The FCA are not following the advice of their board; accordingly, I would ask that you review the FCA decision.

My analysis

8. I should start by saying that I agree with the FCA's position on your complaint for the reasons it gives. There are several limitations upon this Complaints Scheme.
9. Neither I nor the FCA can deal directly with complaints between customers and the banks (that is the role of the Financial Ombudsman Service (FOS)).

Individual complaints, including claims for redress, are a matter for the FOS, or for the Courts.

10. You have queried why your complaint is excluded when the FCA Board recommended complaints about the FCA in connection with IRHP should be reviewed, and that 'if the FCA had designed, administered and overseen the scheme correctly then this injustice towards myself would never have been allowed to happen'.
11. Under the Complaint Scheme, both the FCA and the Complaints Commissioner consider each complaint on its individual merits. This does not, however, mean that the FCA or I will be reviewing the merits of your claim against your bank for the reasons given above. I have reviewed your complaint on its own merits as separate from your claim against your bank and I have concluded it is excluded from the Complaints Scheme for the reasons given above. Individual complaints, including claims for redress, are a matter for the FOS, or for the Courts. If you were eligible for a redress offer but were not satisfied with it, your options were to re-approach the Bank, appeal the decision by bringing your case to the FOS, or take legal action. Unfortunately, there are no other options available to you and the Complaints Scheme is not the forum to progress your claim against the banks.

My decision

12. For the reasons given above, it is my view that your complaint is excluded from the Scheme and the FCA is right not to have investigated it.

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Complaints Commissioner
04 January 2023