

21 June 2023

Final report by the Complaints Commissioner**Complaint number 202201770***The complaint*

1. On 14 March 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. You wrote to me that:

The FCA are not upholding the recommendations of the John Swift QC review (Swift Review), ...victims of the [IRHP] mis-selling should be adequately compensated as they have been unable to claim consequential losses.

My analysis

3. You have approached the Financial Ombudsman Service (FOS) for your consequential losses under the IRHP redress scheme, but you are not satisfied with the outcome. The FCA declined to review your complaint on the basis of paragraph 3.4 of the complaint scheme which precludes complaints about the FOS.
4. I should start by making clear there are a number of limitations upon this Complaints Scheme.
5. First, 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. 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.

6. Second, under paragraph 3.4 (e) of the Complaints Scheme, I cannot review the actions of the FOS. I also cannot review the actions of your bank. All I can do is consider the reasonableness of the FCA's response to the points you have made.
7. I now turn to your allegation that the FCA did not ensure that banks provide appropriate redress to businesses which suffered loss because of IRHP mis-selling overall.
8. This is an allegation I have reviewed from a number of other complainants. You may find it helpful to review some of my decisions which give more background:
<https://frccommissioner.org.uk/wp-content/uploads/202201628-Issued-04-january-2023.-Published-19-january-2023.pdf>
<https://frccommissioner.org.uk/wp-content/uploads/202201592-Issued-04-January-2023.-Published-19-January-2023.pdf>
9. I should start by saying that in evaluating the overall outcome of Scheme, the Swift review says:
10. 'The large majority of eligible customers obtained redress that met the objective of the Scheme and in all likelihood was 'better' from their perspective than any outcome they could have achieved outside the Scheme. For those customers, despite the reservations expressed by this Review about various elements of the Scheme, the FSA/FCA's intervention was thus of significant direct benefit
11. That broad conclusion, however, is subject to some serious qualifications. I have made a number of criticisms of the Scheme and of the FSA/FCA's role in its creation and implementation. Cumulatively, these issues may have impacted on the outcomes for customers/clients, rendering the overall outcome less fair than it might otherwise have been¹

¹ Swift Review, Paragraph 72 and 73 page 365

12. So, while it is accepted there were significant flaws in the FCA's design, implementation and oversight of the redress scheme, some of which the FCA has accepted, I do not think it is reasonable to conclude that the FCA failed to ensure the banks provide appropriate redress to the businesses which suffered loss as a result of IRHP mis-selling based on the Swift Review, and I do not uphold this element of your complaint.
13. The FCA did not agree with all of the Swift conclusions, however, that has no bearing on your complaint and you have not been directly affected by it.

My decision

14. For the reasons given above, I do not uphold your complaint that the FCA did not ensure that banks provide appropriate redress to businesses which suffered loss because of IRHP mis-selling overall.

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Complaints Commissioner

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