

## Preliminary report by the Complaints Commissioner dated 29 November 2017

### Complaint number FCA00353

#### *The complaint*

1. On 27 October 2017 you asked me to investigate a complaint about the Financial Conduct Authority (FCA) on behalf of your partnership L. I have carefully considered all the correspondence both you and the FCA sent me. Before finalising my decision, I invited comments from you and the FCA on my preliminary report issued 6 November 2017. I did not receive comments from you. The FCA suggested a factual correction to paragraphs 9 and 10, which I have made – it does not alter the overall outcome.

#### *What the complaint is about*

2. In its decision letter of 25 September 2017, the FCA described your client's complaint as follows:

*'Your complaint relates to the creation and implementation of the Interest Rate Hedging Product (IRHP) redress scheme. You believe the FCA should have foreseen that the customers involved in the scheme could not approach the Financial Ombudsman Service until their consequential loss claim had been assessed, therefore placing the customers at a disadvantage'.*

#### *What the regulator decided*

3. The FCA did not uphold your complaint. It said:

***The Partnership's was awarded no redress and no consequential losses within by [sic] the IRHP Review because its IRHP sale was judged to be compliant. This meant that the Partnership's participation in the IRHP Review ended at this point. The bank's subsequent consideration of the Partnership's consequential loss claim was made on its own discretion and was not within the scope of the IRHP Review agreement.***

*I do not consider there to be any discrepancies with the way in which the IRHP Review was set up in relation to claims for consequential loss.*

#### *Why you are unhappy with the regulator's decision*

4. You have made a number of representations to me about the FCA's decisions. The principal ones are:
  - a. You ask how a customer is expected to 'include its consequential loss to the FOS at the same time as the appeal of the IRHP mis-selling by the bank/business. When according to the rules the bank/business should be given the opportunity to review the consequential loss claim first before it can be appealed to the FOS'
  - b. You have asked where is 'the source where it clearly states that consumers in appealing their IRHP redress claim to the FOS should include both their direct loss

on the mis-selling of the IRHP product and their consequential loss at the same time.'

*Preliminary point*

5. I make a preliminary point before setting out my analysis. Under paragraph 3.4 (e) of the complaints scheme, I cannot review the actions of the Financial Ombudsman Service (FOS). I also cannot review the actions of your bank.
6. All I can do is consider is the reasonableness of the FCA's response to the points you have made.

*My analysis*

7. I have looked carefully at your complaint, and the FCA's documents.
8. The background to your complaint can be summarised as follows:
  - Partnership L was entered in to the IRHP review by bank X, who undertook a review and concluded the sale had been compliant. Therefore, no redress was offered.
  - The partnership complained to the FOS. The FOS partially upheld the complaint in 2015 and found that although the partnership would still have been required to take out IRHP protection, an alternative product would have been more suitable, and made an award to the partnership of the break clause fees the partnership had incurred, plus the difference between the existing and replacement product plus 8% interest to reimbursed payments.
  - The partnership accepted the FOS final decision above, which made it legally binding on both the partnership and the bank.
  - At some point after the agreement was signed, the bank agreed that the partnership could submit a consequential loss claim, which it said it would review 'outside the IRHP review, but in accordance with its principles'.
  - The partnership submitted a claim which bank X rejected and the partnership submitted a complaint to the FOS in 2016.
  - The FOS declined to look at the complaint as it deemed the matter had been resolved in a binding way through the agreement signed in 2015.

*My analysis*

9. The FCA's role during the IRHP review is one of providing oversight of the banks and the independent reviewers to check that they are conducting their reviews in a way that is fair, reasonable and consistent with the agreed process.
10. In your case, the bank's decision was that your sale had been compliant, and therefore no redress was payable.
11. The FCA has already explained to you that at that point the partnership's participation in the IRHP Review was at an end.
12. However, the IRHP Review does not replace customers' rights to go to the Financial Ombudsman Service or through the courts.
13. You then approached the FOS, which awarded the partnership redress which was accepted. Subsequently, the bank agreed to consider a claim for consequential loss, but having done so decided that you should not be awarded any.

14. The heart of your complaint is that, at that stage, the FOS did not allow you to submit a consequential loss claim because it had already adjudicated on your complaint. You claim that this was a consequence of the design of the IRHP Redress Scheme.
15. I have looked at this carefully. At the point at which the bank rejected your original claim, you left the IRHP Redress Scheme, and chose to use the FOS. At that point, as far as I am aware there was nothing which prevented you from including a claim for consequential loss. The fact that you did not do so, and the fact that the FOS were not prepared to consider your subsequent claim for consequential loss, appears to me to have nothing to do with the Redress Scheme or the FCA.
16. The FOS is operationally independent of the FCA and has its own procedures and rules. I am afraid the questions you have asked in 4 (a) and (b) above are not a matter for the Complaints Scheme, and are questions for the FOS.

My decision

17. I am sorry to read about your difficulties in the last few years in trying to resolve this situation.
18. However, for the reasons above, I do not uphold your complaint, since I do not consider that the FCA is responsible for the failure of your claim for consequential loss.

Antony Townsend

29 November 2017