

## PRESS RELEASE: PARLIAMENTARY GROUP RUBBISHES FCA ARGUMENTS IN HISTORIC JUDICIAL REVIEW

### FOR IMMEDIATE RELEASE

**14 December 2023** – The All-Party Parliamentary Group (APPG) on Fair Business Banking has issued its reply to the Financial Conduct Authority’s (FCA) defence in [an ongoing judicial review](#) (attached). The judicial review seeks to challenge the FCA's decision not to do anything in response to [the finding of the independent reviewer, John Swift KC](#), that it was wrong to exclude thousands of victims from the Interest Rate Hedging Product (IRHP) Redress Scheme.

The FCA provided with its defence approximately 2,300 pages of documentary evidence and witness evidence that it had previously refused to provide. As set out in the APPG’s response, the documents show that the FCA had made its decision to reject the independent reviewer’s findings well in advance of the publication of its decision, and even before it received Swift KC’s final report. The FCA’s decision flew in the face of Swift KC’s findings, and also the findings of the FCA’s own Risk and Compliance Oversight division, which both concluded that the FCA was incorrect to exclude certain customers in the first place.

The APPG also shows that despite receiving criticism from Swift KC regarding its decision not to consult affected parties before excluding them from its IRHP Redress Scheme, it repeated this in relation to its decision to reject the findings of the Swift review. This effectively cut identifiable people who would want to be heard out from the decision-making process. The APPG contends that this shows the FCA’s close-minded approach to its decision, and is lawfully unfair.

**The APPG also contends that the FCA is acting unlawfully in its decision not to accept the findings of its own reviewer and to repeat its mistakes in failing adequately to consider further redress or to consult affected people. It is crucial that it be held accountable to and by the public which it is required to protect.**

The FCA, in its defence, maintains it responded appropriately to concerns of IRHP mis-selling between December 2001 and 2011. The FCA argues that the voluntary agreements with the Redress Banks, resulting in over £2 billion of redress paid to vulnerable consumers, were a rational response given the circumstances at the time. The FCA therefore maintains that its decision to exclude customers was reasonable.

However, despite the new evidence which has come to light in these proceedings, there remains some important gaps on this issue. **In the light of the findings of the Review that the arbitrary notional threshold appeared to have been introduced by HM Treasury, and the lack of any explanation or evidence from the FCA to support its bare denial that it acted at the behest of HM Treasury, it is alleged by inference that**

the Sophistication Test was agreed, at least in part, on the instructions of HM Treasury, which at the time was effectively responsible for the Government's controlling interest in RBS, and its major stake in Lloyds, both banks being heavily exposed to IRHP mis-selling. If that allegation is vindicated, it betrays a troubling and profound conflict of interest that influenced the FCA's regulatory intervention, and who would ultimately bear the brunt of a major part of the cost of the financial crisis.

**This judicial review represents a significant step in the ongoing effort to seek justice and fair treatment for all businesses impacted by the IRHP mis-selling. The outcome of this case could set a precedent for how financial regulatory bodies handle similar situations in the future.**

The APPG's costs of this action are crowd-funded via the following page: <https://www.crowdjustice.com/case/irhp-compensation/>.

**William Wragg MP, Chair of the APPG on Fair Business Banking, said:**

*"The FCA's defence in the IRHP mis-selling case is fundamentally flawed, overlooking the widespread harm inflicted on numerous businesses. Our efforts in this judicial review are more than a legal procedure; they are a pursuit of accountability and fairness in the financial system as a whole."*

*"This landmark case could pave the way for much-needed reform and, most importantly, secure justice for all victims who have suffered due to the shortcomings in the regulatory approach to the IRHP Redress Scheme."*

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