

PRESS RELEASE: PERMISSION GRANTED TO APPG FOR JUDICIAL REVIEW OF THE FCA'S DECISION NOT TO ACT ON FINDINGS OF SWIFT REVIEW

IMMEDIATE RELEASE

30 June 2023 – After an all-day hearing at the Royal Courts of Justice, The Hon. Mr Justice Fordham yesterday granted permission for a Judicial Review of the FCA's decision not to act on the findings of the [Swift Review](#) into the FCA's supervisory intervention on mis-sold Interest-Rate Hedging Products (IRHPs).

IRHPs are derivatives usually traded between large financially sophisticated organisations, but they were sold intensively between 2005 and 2008 by banks to thousands of their smaller business customers, including publicans, hoteliers, chip shop owners, farmers, care homes and doctors' surgeries. Banks sold them alongside or within loans as "protection" against fluctuating interest rates, but commonly failed to disclose the potential downsides and risks. When Bank of England base rate plunged to 0.5% in 2009, the "break costs" to exit many IRHPs ballooned, locking businesses into paying much higher rates of interest. This also increased their risk to the bank which often increased costs further as well as restricting or withdrawing facilities, leading to a significant number of insolvencies and personal bankruptcies.

This Swift Review was published in December 2021 and criticised the IRHP redress scheme, notably the use of the concept of 'sophistication' and the criteria used to define it, stating that the FSA was '...wrong to confine it to a subset of Private Customers/Retail Clients designated as 'non-sophisticated''. These criteria resulted in approximately 5000 customers (across over 10000 transactions) missing out on redress, with a third of IRHPs sold being excluded from the scheme. This exclusion affected around one third of the sales, and thus may have prevented customers accessing over £1 billion of compensation.

The FCA's [response](#) to the Swift Review stated that the FCA it "does not consider that the FSA was wrong to limit the scope of the redress scheme to less sophisticated customers and has concluded that it would not be appropriate or proportionate to take further action. Accordingly, the FCA will not seek to use its powers to require any further redress to be paid to IRHP customers."

The APPG considered that the response fails to address the conclusions reached in the Swift Review in several material respects, and that its decision not to use its powers to require any further redress to be paid to the excluded IRHP customers is flawed and unlawful. A crowdfunding campaign was subsequently launched and over £100,000 was raised for an application for a Judicial Review to take place.

The Judge rejected the FCA's arguments that the application lacked the necessary merits to proceed, that it amounts to a review of the eligibility decision made in 2012 and that the APPG lacks standing. The granting of permission for this Judicial Review to take place means small business owners whose businesses were damaged or destroyed by mis-sold products are a step closer to getting the redress that they are owed.

The APPG will be looking to crowdfund for the next stage of proceedings. Our previous page can be found [here](#).

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For further information or for press queries – contact:

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