

Rt Hon Mel Stride MP  
Chair  
Treasury Select Committee  
House of Commons  
SW1A 0AA

14 December 2021

Our ref: C211213B

Dear Mel,

I am writing to you following today's publication of the Independent Review by John Swift QC into the implementation and operation of the redress scheme set up for customers who were mis-sold Interest Rate Hedging Products (IRHPs) from 2001. This Review follows recommendations made by the Treasury Committee in its report on 'Conduct and competition in SME lending', which was published in June 2015. As you are aware, the FCA Board committed to a review as soon as legal action relating to the redress scheme had concluded and determined that an independent external party should be commissioned to carry out the Review in order to meet the required level of independence.

We have published our response to the report. We accept almost all of the Reviewer's recommendations and will incorporate them into workstreams we have underway concerning pathways to redress, and decision-making and governance. I can assure you that we have already taken action to regulate more proactively to prevent harm to consumers happening in the first place, and that we aim to act far sooner, more decisively and with more information than the FSA did in responding to the mis-selling of IRHPs by banks. Where we disagree with any findings or recommendations, we have set out our reasoning in our Response and below.

Targeting this scheme so that it could be quickly rolled out to the small businesses which needed it most was a complex undertaking. Nevertheless, we acknowledge clear shortfalls in processes, governance and record keeping when decisions about the redress scheme were made, and a lack of transparency. We will ensure that any significant decisions on redress made in the future will be transparent, with appropriate governance, and supporting evidence will be properly recorded. However, we consider that the decision to limit the scope of the scheme to less sophisticated customers was reasonable, given the FSA's aim of providing swift redress to customers in the most vulnerable circumstances, many of whom were struggling in the difficult economic conditions of the time. The actions taken by the FSA nearly a decade ago delivered £2.2bn of redress to thousands of small businesses who were mis-sold IRHPs by their banks.

We welcome the Review's finding that, overall, the Scheme delivered fair outcomes for those customers within its scope. The Review finds that most customers eligible for the Scheme in all likelihood obtained better outcomes than could have been achieved outside the Scheme. We are encouraged that the Review finds that it was appropriate for the FSA to aim for a voluntary agreement. The voluntary agreement delivered outcomes to eligible customers faster and with more certainty than formal regulatory action would likely have done. We also welcome the finding that there was no lack of independence in the way the FSA acted.

The terms of the Review made clear that it was not intended to be a route by which the Scheme could be re-opened, and the Review does not suggest this. However, as a responsible regulator, we have considered carefully, in the light of its findings, whether we should seek to use our powers to require any further redress to be paid to IRHP customers. We have concluded that we should not take any such action.

Notwithstanding the shortcomings in process and governance which we have acknowledged, we consider that the FSA provided appropriate protection to all the various customers involved, including the more sophisticated, who remained able to pursue mis-selling allegations and claims for redress against the banks through complaint routes outside of the Scheme and by litigation. In any event, we consider that it would not be appropriate or proportionate for us to take further action now. The Scheme was entered into by the FSA and the banks by voluntary agreement in good faith at the time and the regulator set out the entirety of the steps it required the banks to take (beyond operating their normal complaints channels and responding to court claims) to ensure they paid redress to mis-sold IRHP customers. We have never suggested we would seek to extend the Scheme or take further steps to include or assist the excluded customers. Doing so now would also make it harder for us to agree other voluntary remediations with firms in future, which would hamper our ability to resolve issues swiftly and require more formal action more often, with the delays and resource burdens that would bring.

It is also important to emphasise that we are a different organisation to the one examined in this review. We have made many specific improvements in the last few years, with further improvements planned. As a result, we would today expect to act far sooner, more decisively and with more information.

That being said, this Review (and earlier independent reviews on London Capital & Finance and Connaught) has shown we still have more to do to ensure we are less cautious and reactive and more willing to investigate and act earlier. A key lesson we take from this Review is its further reminder that we must proactively identify when firms we regulate are making substantial amounts of money from new or rapidly growing products or services. This will allow us to assess whether there is any unfairness (e.g. in design or distribution) that requires us to intervene. We also expect all firms today to give much greater priority to the end outcomes for consumers and markets when they design and deliver their products and services. An important step in ensuring this is our further consultation on a new [Consumer Duty](#) to set clearer and higher requirements and expectations for firms' standards of care towards consumers.

The FCA already has a more proactive approach and better systems, oversight and controls than were in place when the IRHP sales took place. As set out in this year's Business Plan, a significant transformation programme is underway to ensure we are a more assertive, adaptive and innovative regulator that is less cautious and reactive and more willing to investigate and act earlier. We are:

- transforming our approach to intelligence and information, investing heavily in resources and people to get better data and make better use of it
- nurturing a more proactive and assertive culture that empowers our people and helps make decisions quicker and more boldly
- ensuring a more holistic approach to business models, including across the perimeter of regulation

As we have already committed to, we will report on the progress of our Transformation Programme at 6 monthly intervals until the recommendations from this Review and the Reviews into London Capital & Finance and Connaught are substantially implemented.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Charles Randell', written in a cursive style.

Charles Randell

**Chair**