

Terms of Reference

Lessons Learned Review commissioned by the Non-Executive Directors of the Financial Conduct Authority into the supervisory intervention on Interest Rate Hedging Products (IRHPs)

1. The Board of the Financial Conduct Authority (FCA) is commissioning an independent lessons learned review (the Review) into the supervisory intervention on Interest Rate Hedging Products. The Review will cover both the actions of the Financial Services Authority (FSA) and FCA.
2. Subject to legal considerations, the Board intends to publish the report of the Review in full.
3. The Review will cover the period from 01 March 2012 to 31 December 2018. This enable the Independent Reviewer to look at the both the implementation and operation of the pilot and the subsequently the full Redress Scheme.
4. The Review will examine the quality and effectiveness of the supervisory intervention including judgements relating to securing redress for SMEs. The Review will provide an assessment of the FSA/FCA's actions relating to the redress exercise and set out the lessons (if any) that should be learned from the Review. The Review is not intended to be a route by which the redress scheme or individual cases can be re-opened; nor is it intended to assess the appropriateness and reasonableness of individual offers.
5. The Review will address the following questions:
 - 1) Whether the FSA's approach to the intervention, including the potential benefits over alternative options and parameters for the scheme, was a reasonable response to the FSA's concern about the mis-selling of IRHPs, including:
 - (a) The extent of the FSA's jurisdiction over sales of IRHPs
 - (b) The work undertaken to collate and analyse information and assess the extent of IRHP sales
 - (c) The use of a pilot scheme and development of the full scheme, including implementation of any learnings
 - (d) The voluntary nature of the scheme and whether, in light of scope of the FSA's jurisdiction, it was an appropriate way to address concerns about the sale of IRHPs
 - (e) The appropriateness of the communication of the substance and operation of the scheme, including the issuing of guidance, to persons potentially affected by it
 - (f) The transparency of the scheme, including the confidentiality of the agreements with the firms
 - (g) The work to identify and maintain relationships with key internal and external

stakeholders and the extent, nature and frequency of any communications

- 2) Whether the criteria for eligibility to benefit from the scheme were appropriate, including:
 - (a) The scope of the scheme in light of the FSA's jurisdiction, including the definitions of SMEs who might benefit from it, the products covered and whether it was right to exclude commercial loans with mark-to-market break costs
 - (b) The different approach to remediation based on the complexity of the products
- 3) Whether overall, the scheme delivered fair and consistent outcomes for SMEs within the scope of the scheme in a proportionate and transparent way, including:
 - (a) The approach to technical issues, such as but not limited to break cost, contingent liability, application of the sophistication criteria and alternative products as redress (swaps for swaps)
 - (b) The approach to consequential losses including the appropriateness of guidance given by the FSA, both formal and informal
 - (c) The treatment of SMEs in financial difficulty or insolvency
 - (d) Whether the involvement of the skilled persons appointed under s166 FSMA provided adequate assurance that the banks acted fairly in discharging their obligations under the IRHP agreements to achieve consistent outcomes
 - (e) The extent and effectiveness of the FSA's and later the FCA's oversight of the scheme, including the level of reliance on skilled persons and approach to ensuring consistency across firms and skilled persons
 - (f) Whether the agreements provided adequate mechanisms to allow SMEs within the scope of the scheme to challenge proposed redress offers
 - (g) The impact of SMEs ability to refer their case to the Financial Ombudsman Service before their case has been resolved via the redress scheme
 - (h) The approach to monitoring firms' progress and the work of the skilled persons, including the production of management information
- 4) Whether the redress exercise was delivered in an effective and timely way, including whether the effectiveness of the FSA's and later the FCA's oversight of the timeliness of redress, and communications about timescale.
6. The Review will be led by an Independent Reviewer, John Swift QC, who will prepare the report. The Independent Reviewer may make recommendations to the FCA as they see fit.
7. The FCA will provide the necessary supporting resources to enable the Review to be carried out.
8. The Review will be completed within a period of 15 months beginning on the date upon which the Independent Reviewer is appointed by the FCA.

9. If the Independent Reviewer considers that it will not be possible to complete the Review within the period of 15 months mentioned in paragraph 8, they must inform the FCA of:
 - (a) The reasons for the delay in the conclusion of the Review, and
 - (b) A revised target date for the conclusion of the Review.

10. Subject to legal considerations, on completion of the Review the FCA will publish the final report as soon as is practically possible.