[redacted]

From: [redacted]
To: [redacted]
Subject: RE: Meeting with Martin & Clive re CSRC Paper on IRS Pilot outcome
Date: 10 December 2012 15:54:58
Attachments: CSCR[redacted]nd Martin 20121205.doc

Apologies, forgot to attach.

[redacted]
Associate | Supervision Division
The Financial Services Authority
25 The North Colonnade, Canary Wharf, London, E14 5HS
[redacted]

www.fsa.gov.uk

From: [redacted]
Sent: 10 December 2012 15:54
To: [redacted]
Subject: Meeting with Martin & Clive re CSRC Paper on IRS Pilot outcome

[redacted]

Please find attached ahead of tomorrow's meeting. This paper is not yet finalised, as there are a few sections in draft. I will send around an updated version later, but it won't change substantially.

Best,
[redacted]

[redacted]
Associate | Supervision Division
The Financial Services Authority
25 The North Colonnade, Canary Wharf, London, E14 5HS
[redacted]

www.fsa.gov.uk

[redacted]

From: Martin Wheatley
To [redacted]
Cc: [redacted] Martin Wheatley's Office
Sent: Tue Dec 04 21:22:42 2012
Subject: Re: Lessons Learned Review on Interested Rate Hedging Products

Many thanks. It could be that this becomes the next focal point for Banking Commission- it would be good therefore to have some history as to how the product has evolved over time- when it became part of ouR jurisdiction, the first concerns that were brought to us

Best Wishes
Martin

On 4 Dec 2012, at 19:02, [redacted]@fsa.gov.uk> wrote:

> Martin
>
> [redacted] asked me to confirm the scope of the IRHP review to you, in relation to whether the FSA could have intervened earlier.
>
> [redacted] has set out the intelligence we received and relevant dates below.
> We have recently started focussing on this aspect, which involves looking at the information that was available between March 2010 and March 2012, both to the FSA generally and the supervisory teams for the four major banks, and the collation of this information across the FSA.

Please let me know if you have any further questions.

Regards
[redacted]

From: [redacted]
Sent: 04 December 2012 18:46
To: [redacted]
Subject: Lessons Learned Review on IRHP

[redacted]

The above review covers the period from March 2010 to September 2012. The basis for the start date of March 2010 was that this was when the FSA first became aware of potential issues regarding Interest Rate Hedging Products. It was considered that extending the scope prior to this date would make the Review unwieldy and would involve selecting an arbitrary date for the start of the review.

The key events from March 2010 are as follows:

01 Mar 10 - FSA received a letter [redacted] relating to the potential mis-selling of a Structured Collar Interest Rate Hedging Product by Barclays

15 Mar 10 - [redacted] a letter [redacted] was dealing with a number of rate swaps which were sold by various banks to SME businesses during 2007/2008.

03 Mar 11 - [redacted] the FSA's Whistle blowing raising concerns about the mis-selling of Interest Rate Hedging Products by the four largest banks.

09 Mar 11 - MP letter received alleging mis-selling on behalf of one business and referring to campaigning on this issue [redacted]

04 Apr 11 - MP letter received alleging mis-selling on behalf of one business and referring to campaigning on this issue [redacted]

25 May 11 - FSA received three MP letters regarding complaints from business customers, who had been sold Interest Rate Hedging Products and correspondence from a law firm acting for a number of Barclays customers who were considering legal action.

30 Aug 11 - Sky News published an article entitled "Banks Mis-sold interest rate protection".

From 11 Mar 12 - Telegraph and Sunday Telegraph published a series of articles highlighting issues regarding Interest Rate Hedging Products and complaints from customers.

19 Mar 12 - FSA received letter from [redacted]

Let me know if you need anything further.

[redacted]

Associate
CBU Supervisory Oversight Function

[redacted]

From: [redacted]
To: Martin Wheatley; [redacted]
Cc: Clive Adamson; [redacted]
Subject: IRHPs - Meeting with Rt Hon Ed Miliband MP
Date: 16 November 2012 11:32:16
Attachments: Martin Wheatley meeting with Rt Hon Ed Miliband MP.doc

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All,

Please find briefing attached for Martin's meeting with Ed Miliband on Wednesday 21 November.

Best,

[redacted]

[redacted] Parliamentary Affairs | Communications and International Division

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London

E14 5HS

[redacted]

Martin Wheatley meeting with Rt Hon Ed Miliband MP – 21 November 2012

1. You are meeting with Rt Hon Ed Miliband MP to discuss interest rate hedging products (IRHPs) at 3.00pm on 21 November, in Portcullis House. Clive Adamson, [redacted] (Parliamentary Affairs) will accompany you to the meeting. We have a prep meeting at 3.30pm on Monday 19 November.

2. This meeting has been arranged at Miliband's request. We have contacted his office who have advised that he is likely to raise the following issues:
   - Timescale for the review.
   - The pilots.
   - Moratorium on payments.
   - IRHPs in the context of the Banking Reform Bill. Miliband's view is that they should be outside the ring-fence.

3. You should also use this as an opportunity to outline your high-level vision for the FCA and to talk through some of the changes you are driving through.

4. Miliband's office has advised that attendees from their side will include Chris Leslie (Shadow Financial Secretary to the Treasury), Toby Perkins (Shadow Minister for Small Business), Chuka Ummuna (Shadow Business, Innovation and Skills Secretary) [redacted].

5. This briefing provides you with:
   - Core key messages/points to make in the meeting.
   - Supplementary points to make.
   - Background on Miliband's interest on IRHPs.
   - Background on IRHPs.
   - Q&A covering Miliband and Chris Leslie's specific interests.
   - Biography of Miliband and a timeline of his activity on IRHPs.

Core key messages/points to make

6. Our **priority** has been to achieve redress as swiftly as possible for those businesses that have been mis-sold these products, in particular those currently in financial difficulty.

7. On **timing**, we recognise the review is taking longer than people might hope. However, we strongly believe this is the quickest way to secure fair and reasonable outcomes for SMEs.

8. The scheme has been tailored to ensure **individual treatment for each business**. This means each business has their case examined in detail and their voices heard.

9. We remain confident that the scheme we have established, with oversight provided by an independent reviewer and the FSA, is an extremely **robust process**.

10. The **FSA oversight** of the review acts as an additional safeguard for businesses.

Supplementary points to make

11. The early results from our **pilot exercise** seem to demonstrate that the independent reviewers are doing a decent job.

12. Once the pilot has concluded and the formal review starts we have made clear to the banks that we expect the review to be concluded within **6 months**.

13. The FSA is **rigorously scrutinising** the pilot exercise to ensure fair and reasonable outcomes are being reached.

14. We are seeing from the pilot that significant numbers of IRHP sales were **not compliant** with our rules. There was often to a failure to fully disclose the scale of potential **break costs**/exit charges to customers.

15. **Redress** (where due) is a complex area. It is difficult to be prescriptive given the **individuality** of the cases and the need for the bank and customer to reach an agreement regarding ongoing facilities.

16. Redress will be determined on the basis of what is fair and reasonable in each individual case. This could include a mixture of cancelling or replacing existing products with alternative products, and partial or full refunds of the costs of those products.

17. We continue to engage with small businesses to ensure they have a voice in the process:
    - This includes a regular **roundtable** led by HMT and which includes the FSA, the banks, the Federation of Small Businesses and the small business group Bully-Banks.
    - We have established a regular and constructive dialogue with **Bully Banks**.

18. The banks are currently in the process of sending a '**FSA-branded' letter** to c.40,000 customers providing information on the review, and reassurance that the necessary independence and oversight are in place.

19. We have not asked the banks for a **moratorium** on payments for those included in the review as this may result in a complicated situation if it is found that redress is not due after all. Also, not all the businesses sold IRHP are non-sophisticated entities and would fall outside the scope of the review. However, the CEOs of all of the banks have committed that they will not foreclose on any small business included in the review except in exceptional circumstances. And we will consider this question while we are reviewing the findings of the pilot.

20. Miliband believes that the draft Banking Reform Bill should only allow the sale of **derivatives** outside of a ring-fenced bank. We can see the arguments for and against this but we believe that if you decide to let the ring-fence bank sell derivatives to clients then the legislation needs to be extremely clear as to what is and is not permitted.

Background on Miliband's interest

21. Miliband has been active on this issue since June and has met with a number of stakeholders including Bully Banks and has consistently referenced the case of Henderson Signs throughout his speeches; including at the Labour Party Conference when he said "*What the Hendersons and the rest of the country have endured is what I would call the shift from stewardship banking to casino banking. Stewardship banking means returning to a situation where your local retail bank sells simple low-risk products. That would have protected the Hendersons from being mis-sold products that made money for traders rather than served their interests. The people who mis-sold to the Hendersons didn't behave like professionals.*"

22. In July Miliband called on the FSA to broaden its compensation scheme and expressed concern for firms not eligible for redress under the present deal saying: "*We can't just have it [the review] for limited products. This has made me realise that you've got to make it much wider. I will be demanding that the FSA widen its scope. We can't have a situation where people who have so clearly been fleeced in the most reprehensible way ... are excluded.*"

23. In an interview that Miliband gave to the Telegraph on 20 October he called for a meeting with the FSA and argued that the process was taking too long. He commented: *"I don't want to doubt the FSA's good intentions, but you feel like injustice is being piled upon injustice. There is a sense this isn't moving swiftly enough. When an injustice happens is bad enough, but the injustice has got to be tackled swiftly and isn't being."*

Background – IRHPs

FSA findings

1. This summer we announced that we found serious failings in the sale to some small and medium sized businesses (SMEs) of interest rate hedging products (IRHPs).

2. We reached an agreement with Barclays, HSBC, Lloyds, and RBS and seven other banks, to provide appropriate redress where mis-selling has occurred, with all cases scrutinised by an independent reviewer (Skilled Person). The banks agreed to:

   - provide redress on sales of structured collars to 'non-sophisticated customers' made after 1 December 2001;
   - review sales of other interest rate hedging products (except caps or structured collars) for 'non-sophisticated customers' on or after 1 December 2001; and
   - review the sale of a cap if a complaint is made by a 'non-sophisticated customer' during the review.

3. Since the summer we have devoted huge efforts to getting the right, robust methodology in place prior to the full reviews commencing. Our priority remains the same; to achieve a swift, fair and reasonable outcome for those businesses that have been mis-sold these products. The banks are aware that small businesses need their cases to be reviewed promptly, and that each review must be conducted with the customer at its heart.

Pilots

4. We are now reviewing the results of a pilot exercise (from 5 banks so far – Barclays, HSBC, LBG, RBS, AIB) to ensure the right outcomes for consumers are being reached. We are reviewing the application of the methodology and assessing whether we believe the banks are reaching fair and reasonable outcomes for consumers. We expect the first firms to begin their full, formal reviews in December.

5. The pilot requires each firm to conduct a full review of between 30 and 60 cases, depending on the type of products sold and the number of Skilled Persons appointed.

6. The remaining firms (BOI, Co-op, Clydesdale and Yorkshire Banks (part of the National Australia Group (Europe) and Santander) are currently conducting their pilot exercises and are due to complete within the next 2 weeks or so.

7. We appreciate that it can be frustrating for consumers awaiting the commencement of the full, formal review. However, we have to make sure that the banks are getting it right before allowing them to begin.

8. We have indicated to all the banks that we expect the full, formal review to be completed within 6 months. Some of the firms, and their Skilled Persons, have told us that they believe that 6 months will be challenging but that they will work towards the timeline we have set. We have found that when contacted, customers want sufficient time to prepare for their interview with the bank – to get all their documents ready and this has meant the pilots have taken longer than planned – but we remain of the view that customer testimony is fundamental to a fair process.

Wider Parliamentary interest

9. IRHPs has generated significant parliamentary attention. Andrew Tyrie wrote to Adair in March and we responded in April, there was parliamentary debate in June and Clive has met Chris Leslie and Toby Perkins (20 June) and Guto Bebb (10 July and 6 November).

10. Guto Bebb has been the leading parliamentary campaign on the issue and has established an All Party Parliamentary Group on Mis-selling to conduct an inquiry into IRHPs. Clive will be holding a roundtable meeting with the group on 13 December.

Q&A

Q2: What is the scope of the review?

- The review covers all sales, since December 2001, to customers categorised under our rules as either "private customers" (in respect of sales made by the Firms on or before 31 October 2007) or "retail clients" (in respect of sales made by the Firms on or after 1 November 2007).

- Of these sales, our review will focus on smaller businesses which in our view are unlikely to possess the specific expertise to understand all of the risks associated with these products. We have classified these as 'non-sophisticated' customers. A customer would be classified as a 'sophisticated' customer if at least two of the following were met, in the financial year during which the sale was made:

    - A turnover of more than £6.5 million
    - A balance sheet total of more than £3.26 million
    - More than 50 employees.

- This reflects the criteria used in the Companies Act 2006 for classifying companies that are subject to the small companies regime, and which have lighter reporting requirements, and are therefore less likely to have staff or advisers with appropriate knowledge and skills.

- We have agreed with the banks that they can classify a customer as a 'sophisticated' customer if they can demonstrate that at the time of the sale the customer had the

necessary experience and knowledge to understand the service to be provided and the type of product or transaction envisaged, including its complexity and the risks involved.

Q3: Why is the scope of the review not wider?

- We are focussing the review on those smaller businesses that we believe are unlikely to possess the specific expertise to understand all of the risks associated with these products. We do not want to intervene in relation to larger firms that had the expertise to understand the risks. We believe that the sophistication criteria we have used, reflecting the criteria used in the Companies Act 2006 for classifying companies that are subject to the small companies regime, is the right approach.

Q4: Which banks have signed up?

- On 29 June 2012, we announced that we had reached an agreement with the four largest UK retail banks; Barclays, HSBC, Lloyds and RBS.

- In addition, on 23 July 2012, we announced that seven other UK banks, who have sold these products to small and medium sized businesses, have also volunteered to participate in the redress exercise and past business review to ensure that all customers who have been sold these products are treated consistently. These banks are Allied Irish Bank (UK), Bank of Ireland, Clydesdale and Yorkshire banks (part of the National Australia Group (Europe)), Co-operative Bank, Northern Bank and Santander UK.

- Irish Bank Resolution Corporation (IBRC), formerly Anglo Irish Bank and Irish Nationwide Building Society, have also agreed to review their sales of interest rate hedging products sold from their UK branches.

Q5: What is the role of the independent reviewer?

- The independent reviewer will review all aspects of the redress exercise and past business review. This will include the methodology and review of each individual case.

Q6: How did you ensure that the independent reviewers are independent?

- We conducted a robust approval process to ensure the independent reviewers have the necessary skills, expertise and independence to understand both the complex aspects of interest rate hedging products and the specific needs of SMEs. Our approval process also scrutinised any potential conflicts of interest to ensure that the reviewers are truly independent of the bank and its customers.

- Where we identified the potential for a conflict of interest between individual customers and the independent reviewer appointed by the bank (or a perception that there could be a conflict), we have required the banks to appoint a second independent reviewer to review those cases.

Q7: What happens to customers currently experiencing financial difficulties?

- The banks have agreed to prioritise cases where customers are in financial difficulty.

- The banks have committed that, except in exceptional circumstances such as, for example, where this is necessary to preserve value in the customer's business, they will not foreclose on or adversely vary existing lending facilities without giving prior notice to the customer and obtaining their prior consent, until a final redress determination has been issued, and if relevant, redress provided to the customer.

Q8: Are customers able to input into the review process?

- Yes, we have stressed to independent reviewers and banks that the customers testimony is important, and we expect them to engage with customers. If a case is taken forward to the formal review phase then customers have the opportunity for the independent reviewer to be present when the bank speaks to them.

Q9: Are the banks still able to sell these products?

- Yes they are still selling these products and must meet our rules when doing so. However, we have agreed with the banks that they will stop marketing the most complex structured collars to retail clients (as defined in our rules).

Q10: What progress has been made with setting up a separate FOS scheme?

- In our original announcement on IRHPs, we announced that we had written to the Financial Ombudsman Service (FOS) inviting the scheme operator to think about whether there could be a specific scheme for dealing with the outcome of the review of interest rate hedging products and related matters.

- Without a separate scheme not all small and medium enterprises (SME) would be able to complain to the Financial Ombudsman Service about potential breaches of our rules. The ombudsman service is able to consider complaints brought by micro-enterprises against FSA-regulated firms. A micro-enterprise is a business that has a turnover or an annual balance sheet not exceeding 2 million Euros and employs fewer than ten persons. As a matter of course if a business does not meet the ombudsman service's eligibility criteria, they will need to consider taking action through the courts. Work on establishing a separate scheme has continued and our discussions have now reached an advanced stage. We have developed some high-level proposals which we have shared with the firms and small business groups, to a mixed response.

- Broadly, the proposal is to establish an additional part of the Ombudsman's voluntary jurisdiction that would deal solely with complaints about the sale of IRHPs and related matters. This would increase the number of customers eligible to go to the FOS, in line with our sophisticated/non-sophisticated criteria; ensure there is no upper limit on redress awards; remain open for three years, and; cost the banks £4000/case.

Q11: Has the FOS made any recent decisions?

- Yes; the FOS ruled on 2 cases, where it found in favour of the customer. The ombudsman looking at both cases found that both banks likely strayed into advice during the sale; and should therefore have followed appropriate obligations in respect of suitability. The ombudsman also found that even if advice did not take place, the information provided was not fair, clear and not misleading due to an insufficient disclosure of break costs. We believe that the FOS outcome is broadly in line with the principles of the review we have set up.

Q12: Why didn't the FSA set up a fully 'independent' stand-alone review?

- The independent reviewers need a range of skills - e.g. knowledge of derivatives, customer reviews, plus access to extensive resources to do the independent reviews. It is unlikely that any single firm would have all the resources necessary for all this work – i.e. reviews of potentially 40,000 sales. We have been clear about our expectations of the independent reviewers - e.g. their need to ring-fence staff, and in some cases have rejected some of the reviewers proposed where we felt that they did not have the appropriate experience.

- We have met with organisations proposing alternative schemes. However, we were (extremely) unconvinced that this alternative was able to gather sufficient resources, with the right skills and expertise, to conduct the review. We did not feel that this alternative scheme would deliver the fair and reasonable outcomes we desire, or complete the review promptly.

Q13: Why is the review taking so long?

- We are acutely aware of the importance of delivering the right outcomes for consumers as quickly as possible; particularly for those small businesses experiencing financial difficulties.

- We have required the banks to develop a methodology detailing how they propose to conduct the proactive redress exercise and past business review. This includes a pilot exercise, which has now finished for the majority of the largest banks. The aim of this exercise is to allow the FSA the opportunity to review the approach taken by the banks and ensure that it is delivering the right outcomes for small businesses. Now the pilots are coming to a close, the FSA reviewing in detail the application of the methodology and will feed back its views to the banks, and independent reviewers, requiring changes where necessary.

- The banks will not be able to proceed with the formal review phase until the FSA is satisfied that they are getting it right for small businesses. This takes time; but it is a vital part of our approach.

Q14: What kind of redress can people expect to receive?

- Depending on the outcome of the review, redress may or may not be appropriate. Where redress is deemed appropriate, this will be fair and reasonable to individual consumers, and will be calculated with the customer in mind.

- Redress will be dependent on a number of factors, including the level of detriment caused, the rule breach that caused the detriment and the individual circumstances of the consumer.

- Consumers should not assume that redress will necessarily be a large cash payment, though this may be the case if it were the fair and reasonable outcome.

- Redress could also include a mixture of cancelling or replacing existing products with alternative products.

- The calculation of redress is a complex one, given the products sold and the different circumstances of individual consumers.

- It is unhelpful to issue prescriptive guidance on redress as we want it to vary according to the circumstances of the case and the needs of the individual consumer.

Q15: What is the scale of redress that the banks will have to pay out?

- Too early to say but initial indications suggest it will not be the same scale as PPI although it is a significant cost.

- The banks have mae a number of provisions on the likely costs.

Q16: Why have you not defined what constitutes a mis-sale?

- When we published our findings in June, based on a sample of files at Barclays, HSBC, LBG and RBS, we found evidence of poor sales practices, including:

    - poor disclosure of exit costs;
    - failure to ascertain the customers' understanding of risk;
    - non advised sales straying into advice;
    - 'over-hedging' (i.e. where the amounts and/or duration did not match the underlying loans); and
    - rewards and incentives being a driver of these practices.

- We expect that the banks and the independent reviewers will consider our findings as a key part of their review into individual sale. In addition, there are the regulatory requirements as laid out in the FSA Handbook.

Biography

- MP for **Doncaster North** (Lab) since 2010.
- **Parliamentary Career**: Minister for the Cabinet Office; Chancellor of the Duchy of Lancaster 2007-08; Secretary of State for Energy and Climate Change 2008-10; Shadow Secretary of State for Energy and Climate Change 2010; **Leader of the Opposition 2010-**

Ed Miliband was a television journalist, Special Adviser and Labour Party researcher before he entered Parliament. He beat his brother David Miliband in the Labour leadership contest in 2010. Recent focuses have included the culture of banking, the living wage and a push for the Government to request a real terms cut in the EU budget.

Interest Rate Hedging Products

- *30th June:* **Inquiry**

  Following the escalation of the LIBOR and IRS scandals, Miliband pushes for a public, judicial inquiry into the "institutional corruption in banking". After losing the vote in favour of a parliamentary commission, Miliband argues that a parliamentary inquiry is not wide or forensic enough. He believes the inquiry should be tasked with coming up with a new code of conduct for bankers.

- *2 July:* **Fabian Society Summer Conference (Speech)**

  Miliband delivers a speech on banking and refers to small businesses being ripped off by banks. He states that "The Financial Services Authority has not even been able to find out who knew what and when."

- 3 July: **Interview with ITV's Libby Weiner:**

  Miliband says there are issues are culture and practice that made small businesses across the country be ripped off by complicated products they didn't need, and asks what is it that is making people in the banking industry do those sorts of things.

- *July 5:* **Meeting with Vedanta Hedging and Henderson Signs**

  Vedanta Hedging meets with Miliband and small business Henderson Signs (mis-sold by Natwest and Miliband's main case that he uses) to understand IRHPs and explain why the FSA scheme may not lead to full redress if victims rely purely on the FSA process. Miliband says the idea that Henderson signs does not qualify for redress because the product sold was not classified in the highest priority section despite being equally or more complex is unacceptable. He calls on the FSA to widen its scope. Redress can't just be for limited products.

- *9 July:* **'Rebuilding Britain: Real Change For Britain's Banks' (Speech)**

Miliband talks about Henderson Signs throughout his speech and said that because of their bank, they had, without knowing it, "placed a bet they didn't want". He states that there is a shift from stewardship banking to casino banking. Stewardship banking means returning to a situation where local retail banks sell simple, low-risk products. Miliband thinks the Vickers proposals are being watered down to allow high street banks to continue selling these products.

- *29 Sep:* **Pre-Conference 'Message For Banks'**

  Miliband states that banks have until the next election to change (May 2015) and show that high street banks will operate in a genuinely independent fashion from their casino arms, and focus on supporting British business. If this does not happen, the next Labour government will break them up via legislation. Carrying on as they are is not an option. Britain's banks need to change if we are going to come through this crisis and build an economy

- *2 Oct:* **Labour party annual conference 2012**

  Miliband talks specifically about Henderson Signs again. He says his bank was more interested in playing the internationally money market than working for him, which is why he was ripped off.

- *20 Oct:* **Miliband demands that the FSA act faster on mis-sold swaps (The Telegraph)**

  Miliband reveals he will request a face to face meeting with the FSA and representatives of major banks. He wants to back small businesses' concerns about the scheme and says although he doesn't doubt the FSA's good intentions, it isn't moving swiftly enough and banks are dragging their feet. Miliband says he shares small businesses' concerns about the scheme and thinks it is an example of the banks "dragging their feet". The Federation of Small Businesses welcomed the support.

From: Martin Wheatley
To: [redacted]
Cc: [redacted] Clive Adamson; [redacted] Zitah McMillan; Tracey McDermott
Subject: Re: Guardian Care Homes IRS/Libor case against Barclays
Date: 30 October 2012 07:57:11

I'm not sure the judgement will say much- simply that the case can be heard. What I am really interested in is the legal analysis of both sides of the argument. With the recently published FoS cases it will all turn on the sophistication of the client, what they were told and what they could reasonably have understood about the product and its possible effects - I think Libor is a bit of a red herring.

Best Wishes
Martin

On 30 Oct 2012, at 07:53, [redacted]@fsa.gov.uk> wrote:

> I will also ask Barclays for the judgment and we'll speak to them urgently this morning.
>
> ---
>
> **From:** [redacted]
> **Sent:** 30 October 2012 07:52
> **To:** Martin Wheatley
> **Cc:** Clive Adamson; [redacted] Zitah McMillan; Tracey McDermott
> **Subject:** RE: Guardian Care Homes IRS/Libor case against Barclays
>
> Nothing detailed in the press but we'll ask GCD/Enf to see if they can get hold of the judgment.
>
> ---
>
> **From:** Martin Wheatley
> **Sent:** 30 October 2012 07:50
> **To:** [redacted]
> **Cc:** Clive Adamson; [redacted] Zitah McMillan; Tracey McDermott
> **Subject:** Re: Guardian Care Homes IRS/Libor case against Barclays
>
> Is there any detailed assessment of the charges? The original case hinged on whether Barclays owed a duty of care to GCH and therefore was around the sophistication of GCH as a buyer of complex product. All the headlines are about Libor- is that the media getting over excited or has the grounds substantially changed? Does that impy the original case was weak?
>
> Best Wishes
> Martin
>
> On 30 Oct 2012, at 07:44, [redacted]@fsa.gov.uk> wrote:
>
> > FYI - this has got a lot of coverage today. If press reports are correct:

- Barclays will have to hand over the 4,400 libor-related emails
- They will have to name the senior managers that knew about lowballing - unless they choose to settle
- Judge accuses Barclays of 'shadow-boxing' and says Bob Diamond will be called to the witness box
- Next court date 13 November
- Barclays say the case has no merit and they'll fight it all the way

[redacted]

http://www.thetimes.co.uk/tto/business/industries/banking/article3583747.ece

Care home group to sue Barclays for up to £37m in Libor-rigging test case

Barclays must disclose the names of senior managers who knew about the 'low-balling' of Libor

Barclays will become the first bank to stand trial in the High Court over the effects of its manipulation of the Libor interest rate, in a landmark case that could open the way for a fresh wave of claims.

A Wolverhampton-based chain of care homes is suing the bank over £70 million worth of "swaps" they bought in 2007, which were designed to protect businesses against interest rate spikes. As part of its claim, Guardian Care Homes says that the bank deliberately sold a product that depended on the Libor benchmark, at the same time that senior management knew they were lying about the bank's daily submission. The group, which owns 27 care homes, is suing Barclays for up to £37 million.

In a withering judgment, Mr Justice Flaux said that it was a legitimate issue to go to trial in a full hearing next year.

"Any senior management who gave the matter a moment's thought would have concluded any customer would be entitled to expect the rate had not been manipulated," he told the court.

The case suggests that the High Court will rule next year on whether customers can claim compensation for products sold by banks manipulating the Libor rate, even if they cannot prove they suffered an individual loss.

The judgment could also trigger significant internal difficulty for Barclays, which must now disclose the names of senior managers who knew about the "low-balling" of Libor as early as November 13 if it does not settle before the case is next in court.

They look likely to be forced to hand over a significant proportion

of the 1.3 million documents shared with the Financial Services Authority and US Department of Justice, which were investigating Barclays this year.

As part of the £290 million settlement in June, the identities of many senior staff aware of the practice were not disclosed. Mr Justice Flaux said the claim had a reasonable chance of success at trial and criticised lawyers for trying to strike it out at an early stage, before awarding costs against Barclays.

"Your clients know jolly well what is being alleged. The real issue is that they are trying to shut it out at this stage because they don't like it."

The Libor interest rate underpins more than $300 trillion of loans and financial contracts, and accusations that banks that used it in their products were also attempting to manipulate it could trigger a wave of other claims.

HSBC, RBS and Lloyds Banking Group are among those understood to be still under investigation. The Guardian Care Homes case, which could come to trial next October, will therefore act as a test for whether banks that manipulated Libor will have to pay compensation for products they sold that used Libor.

The case will be the first of its kind and is being closely watched by thousands of small and medium-sized enterprises that may decide to file similar claims, the Federation of Small Businesses said.

The Financial Services Authority estimates that 44,000 interest rate swaps have been wrongly sold to UK companies since 2001.

Gary Hartland, chief executive of Guardian Care Homes, said: "Today is a huge milestone with a trial now going forward to determine whether these financial products should be declared void. Our claim is not just based on mis-selling but on the effect of senior management at Barclays instructing the aggressive selling of swaps while attempting to rig Libor."

Barclays said last night: "Barclays understands the client entered into their swap agreements with sufficient understanding to exercise their own judgment as to whether the products would meet their business objectives. This is a significant business, which owes Barclays £70 million. We do not believe any aspect of the case has merit and are defending it."

From: Martin Wheatley
To: Adair Turner
Cc: Andrew Bailey (Banking)
Subject: Re: Swaps etc.
Date: 30 June 2012 18:16:37

Adair
The constraints of FSMA mean that our enquiry has been limited to 'investment products' but not loans. There is an equivalent problem of people who entered into fixed rate loans- these carry a premium and break clauses similar to those that exist in swaps etc, but these are outside our remit. So there are a range of loans as well as many clients who are not touched by our agreement- we do not have data on this but I suspect we are talking large numbers.
On your second point - there are multiple and confusing definitions split over Uk law and European directives on what a retail investor is. There is no simple definition and it would be difficult for us alone to create one.

Best Wishes
Martin

On 30 Jun 2012, at 16:54, "Adair Turner" <Adair.Turner@fsa.gov.uk> wrote:

> Martin , I'm reading the briefing on IRS ahead of television interview tomorrow am . Two questions
>
> - it says "interest rate hedging products are typically separate to a loan and if so , regulated by the FSA " . Has the fact that we don't regulate credit products (yet) been any sort of contsraint on our action in this case . Are SMEs which bought hedges which were integrated with the loan outside our scheme ?
>
> - will we / should we / can we revisit the retail/non retail and sophiticated/non sophisticated dividing lines in light of what we now know ?
>
> Thanks , Adair

From: [redacted]

Sent: 29 June 2012 11:11

To: [redacted]

Subject: Drinks Party Monday 2nd July : Draft email

[redacted]

Draft email from [redacted] for Martin to send to contacts attached. We are still awaiting response on team members from one or two and will get those to you asap.

Today we had a great success for small business consumers. We announced that the 4 major banks have agreed to a redress programme in relation to interest rate hedging products. I know this result was down to the efforts of a large number of staff across the business.

To mark this success and to say thank you to you all, you are invited to the 1st floor for drinks on Monday evening from 17.30hrs.

<< File: IRS thank you list.doc >>

Cheers

[redacted]

[redacted] Retail Banking 2
Conduct Business Unit | T: 62556 |

<IRS thank you list.doc>

[redacted]

On 30 Jun 2012, at 10:07, "Media Out of Office" [redacted]@fsa.gov.uk> wrote:

> Just in case you're wondering where the Precise coverage is this morning to see how the IRS announcement (and everything else) has been covered - they've had an IT problem which has delayed the emails. On a normal night it takes 6 hours to send them all so they are now trying to catch up. But you will get them.

From: Martin Wheatley
To: Clive Adamson; [redacted]
Subject: Mtg
Date: 30 June 2012 10:06:46

In our meeting with BD last week re IRS , [redacted] I did not pursue as I was focused on IRS- [redacted]

Best Wishes
Martin

From: Martin Wheatley
To: [redacted] Zitah McMillan; [redacted] Clive Adamson; [redacted]
Subject: Recognition of the successful conclusion of IRS negotiations
Date: 29 June 2012 15:46:00

Dear Colleagues,

Today we have announced that we have reached agreement with Barclays, Lloyds, HSBC and RBS to provide appropriate redress where mis-selling of interest rate hedging products has occurred. This is a great success for small business consumers and was a result of your hard work and determination and endeavour.

To mark this success and to say thank you to you all, Clive Adamson and I formally invite you to drinks and nibbles on Monday 2 July on the 2nd Floor from 17.30.

In the meantime, for those of you whom are still working, go home and enjoy a well earned rest over the weekend and be proud of what you have achieved today and over the past few months. You never know we may see some sunshine.

Regards

Martin

From: Martin Wheatley
To: [redacted]
Cc: Zitah McMillan; [redacted] Clive Adamson; [redacted]
Subject: Re: Interest rate swaps
Date: 25 June 2012 07:44:15

I have seen a few mentions of a 'report' over the weekend. Can we consider what it is that we will publish and then try to manage expectations around it. As far as I am aware our only public commitment was an 'update' on our work by the end of this month.

Best Wishes
Martin

On 25 Jun 2012, at 06:50, [redacted]@fsa.gov.uk> wrote:

> Dear all
>
> Please see below from my contact at BIS.
>
> Please can you confirm whether Vince Cable is on the list for communications.
>
> I was planning to revert back and say that I would be happy to brief my contact after hours on Thursday evening or Friday morning.
>
> Best regards
>
> [redacted]
>
> ----- Original Message -----
> From: [redacted]gov.uk>
> To: [redacted]
> Cc: [redacted]
> Sent: Sun Jun 24 15:15:07 2012
> Subject: Interest rate swaps
>
> [redacted]
> I understand the IRS report will be coming out on Friday- it would be good to understand what it will cover, and what conclusions might be drawn about redress for small firms- Vince Cable has expressed a wish to be involved when the report is published.
>
> Many thanks,
> [redacted]
> (Sent from a hand held device)
>
>

From: Martin Wheatley
To: [redacted]
Cc: [redacted] Clive Adamson; [redacted]
Subject: Re: IRS
Date: 21 June 2012 20:35:11

Thank you.
[redacted]
don't need any more info for now thanks
Best Wishes
Martin

On 21 Jun 2012, at 19:46, "[redacted]@fsa.gov.uk> wrote:

> Martin
>
> Our best estimate at the current time is £1.5 to £2bn across the four firms.
>
> This assumes 20% missale of swaps and collars and 70% missale of structured collars with full refund of break costs for the 20% and move to simple collar for the 70%.
>
> If you need any further detail please do not hesitate to email.
>
> Best regards
>
> [redacted]
>
> ----- Original Message -----
> From: Martin Wheatley
> To: [redacted]
> Cc: [redacted]; Clive Adamson
> Sent: Thu Jun 21 19:18:39 2012
> Subject: IRS
>
> Missing from the slides is the only issue that FPC will be interested in: what is our current best estimate of total cost of redress? My recollection from earlier discussion was £700m. Is that still our bes t guess?
>
> Best Wishes
> Martin

From: Martin Wheatley
To: Zitah McMillan
Subject: Fwd: Interest Rate Swaps press release and Q&A
Date: 29 June 2012 09:59:27

Did we give an answer to this? - an item for Telegraph? Kleinman?
Best Wishes
Martin

Begin forwarded message:

From: "Adair Turner" <Adair.Turner@fsa.gov.uk>
Date: 29 June 2012 09:03:15 GMT+01:00
To: [redacted]@fsa.gov.uk>
Cc: "Andrew Bailey (Banking)" <Andrew.Bailey@fsa.gov.uk>, "Martin Wheatley" <Martin.Wheatley@fsa.gov.uk>
Subject: Re: Interest Rate Swaps press release and Q&A

Thanks . In addition to the 28000 customers figure , are we going to say anything about the gross value £ bn of the swaps that were sold. - I think some indication would be useful an know we have had it in internal docs

Sent from my iPad

On 29 Jun 2012, at 08:32, [redacted]@fsa.gov.uk> wrote:

Here is the press release and Q&A following this morning's announcement. [redacted]

FSA agrees settlement with four banks over interest rate hedging products

The FSA has today announced that it has found serious failings in the sale of interest rate hedging products to some small and medium sized businesses (SMEs). We believe that this has resulted in a severe impact on a large number of these businesses. In order to provide as swift a solution to this problem as possible we have today confirmed that we have reached agreement with Barclays, HSBC, Lloyds and RBS to provide appropriate redress where mis-selling has occurred.

The banks will move to provide redress directly for those customers that bought the most complex products. They have also agreed to stop marketing interest rate structured collars to retail customers.

Interest rate hedging products can protect bank customers against the risk of interest rate movements and can be an appropriate product when properly sold in the right circumstances. During the period 2001 to date, banks sold around 28,000 interest rate protection products to customers.

These products range in complexity from comparatively simple "caps" that fixed an upper limit to the interest rate on a loan, through to the more complex derivatives such as "structured collars" which fixed interest rates within a band but introduced a degree of interest rate speculation.

Over the past two months the FSA has conducted a review of these sales. We have reviewed a significant amount of documentation from the firms (including sales files, customer complaints and taped conversations). We have also talked to over 100 customers who have come forward.

We have found a range of poor sales practices including:

> Poor disclosure of exit costs;
>
> Failure to ascertain the customers' understanding of risk;
>
> Non advised sales straying into advice;
>
> "Over-hedging" (i.e. where the amounts and/or duration did not match the underlying loans); and
>
> Rewards and incentives being a driver of these practices.

Not all businesses will be owed redress, but for those that are, the exact redress will vary from customer to customer, but could include a mixture of cancelling or replacing existing products, together with partial or full refunds of the costs of those products. This exercise will be scrutinised by an independent reviewer at each bank appointed under the FSA's powers.

Martin Wheatley, managing director of the Conduct Business Unit, said:

> "For many small businesses this has been a difficult and distressing experience with many people's livelihoods affected. Our work has focused on ensuring a swift outcome for these businesses that form such an important part of the economy.
>
> "I am pleased that Barclays, HSBC, Lloyds and RBS have agreed to do the right thing by their customers and offer redress or a review of past sales. These firms have responded to the need to provide a fair deal for customers by working with us, and I welcome this outcome.
>
> "I am particularly pleased that the CEOs: Bob Diamond, Brian Robertson, Antonio Horta Osorio and Chris Sullivan have provided a personal assurance that they will have responsibility for oversight of this work and will ensure that complainants are treated fairly. They have also committed that, except in exceptional circumstances, they will not foreclose on or vary existing lending facilities without the customer's prior consent."

NOTES FOR EDITORS

Further details about these products, the FSA's work and the agreement can be found attached.

2. The FSA regulates the financial services industry and has four objectives under the Financial Services and Markets Act 2000: maintaining market confidence; securing the appropriate degree of protection for consumers; fighting financial crime; and contributing to the protection and enhancement of the stability of the UK financial system.

3. The FSA will be replaced by the Financial Conduct Authority and Prudential Regulation Authority in 2013. The Financial Services Bill currently undergoing parliamentary scrutiny is expected to receive Royal Assent by the end of 2012.

[redacted] | Press Office | Communications Division

Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS
Tel: 0207 [redacted]
www.fsa.gov.uk

<IRS Friday am Q&A.doc>

To: Martin Wheatley Date: 27 September 2012

From: [redacted] cc: [redacted]

Subject: **Interest Rate Swaps: Voluntary Ombudsman Scheme**

To brief you on the design of a standalone Ombudsman scheme for interest rate swap ("IRS") mis-selling and next steps for establishing the scheme for you to discuss during your call on 28 September [redacted]

1. You previously met [redacted] on 29 August to discuss the proposed standalone Ombudsman Scheme for IRS mis-selling (the "Scheme"). You are scheduled to discuss the final design of the Scheme and next steps on 28 September.

2. The Ombudsman Service and the FSA have had a number of discussions at working level about the design of the Scheme, and are content (at working level) with the draft rules and the detailed design of the scheme. This note outlines the high level structure of the scheme and outlines the next steps for the establishment of the scheme.

We recommend that you discuss and agree that to proceed with the establishment of the Scheme on the basis of the design features outlined below.

High Level Proposal

3. Broadly, we propose that the Scheme be designed with the following features:

   a) the Scheme will be open to any person who meets two out of the following three criteria:

      - turnover not more than £6.5 million;
      - a balance sheet total of not more than £3.26 million;
      - not more than 50 employees'; and

   who had purchased an interest rate swap product from a participating business on or after 1 December 2001.

   b) The Ombudsman can consider a complaint about any act or omission that is related to the hedge product, including any ancillary activity related to that hedge product.

   c) The Ombudsman Service will decide cases under the Scheme on the basis of what is fair and reasonable in keeping with its normal powers and approach

   d) There is no limit to the amount of redress that the Ombudsman can award.

   e) The Ombudsman will be able to consider a complaint about an IRS product if:

18. Product characteristics which are most likely to feature in FCA mis-selling cases are:

- Inappropriate risk profiling of customers;
- Limited scope for the purchaser to benefit (e.g. low value general insurance products including identity theft cover);
- Risk appears unfairly stacked in favour of the selling firm and against the consumer (e.g. 'partnership' mortgages);
- Complicated financial products inappropriately sold to unsophisticated investors (e.g. interest rate swaps);
- Sale of inappropriate products on a non-advised basis (where either more information should be given, or the product should not be offered at all without accompanying advice);
- Inaccurate description of products on comparison / aggregator websites resulting in consumers purchasing products which they do not understand or are not suitable for their needs; and
- Unreasonable barriers to claiming on insurance products.

19. We expect that there will be a particular focus on packaged bank accounts, UCIS and mobile phone insurance as these are key risks in specific sectors and thematic work is planned or underway in these areas.

Firms not acting as they say the will

20. We intend to take action where firms fail to act as they say they will, for example in respect of PPI complaints handling (given the widespread mis-selling of PPI and significant consumer detriment) or where firms fail to properly correct failings. A thematic review of PPI complaints handling is underway and is expected to generate referrals to Enforcement.

Reward

21. We continue to be concerned about the use of high risk reward structures without appropriate controls at all levels within firms which may influence the behaviour of staff and increase the risk of poor or unsuitable consumer outcomes. Features of reward structures which are likely to increase the risk of unsuitable consumer outcomes are:

- Bonuses / incentive awards weighted inappropriately towards sales targets;
- Thresholds which place undue weight on a small number of sales (e.g. where making one more sale at the end of a month might result in significantly higher remuneration); and
- Failure to consider an individual's record of compliance with the firm's rules when setting pay.

[redacted]

From: [redacted]
To: Martin Wheatley
Cc: [redacted]; [redacted]
Sent: Tue Jan 29 10:45:35 2013
Subject: Call with Greg Clarke

Martin
We've had a call from Greg Clarke's office – Greg would like to speak to you today about Interest Rate Swaps. He is available for a call between 3 and 4.30pm UK time.
Please could you let me know if you would be available to take a call during this time?

Thanks

[redacted]
EA to Martin Wheatley, Managing Director
Conduct Business Unit
Financial Services Authority
Tel: 0207 [redacted]

[redacted]

On 29 Jan 2013, at 18:29, [redacted]@fsa.gov.uk>wrote:

Martin – are you happy with the below to send to Greg Clarke
Greg
Following our conversation earlier today on interest rate swaps I wanted to clarify one of the points raised relating to the prudential impact of our approach.
We don't have numbers i.e. potential liability figures from the firms. The firms will be working on these over the next 24 hours.
As companies listed on the London Stock Exchange, they will each need to make an announcement to the market if these figures are material for them. When we have this information, usually shortly in advance of an announcement, we will share with you.
As discussed earlier we will also share with you tomorrow our proposed communications strategy and press release.
Best wishes
Martin

Switchboard 020 7066 1000

Web Site http://www.fca.org.uk (FCA); http://www.psr.org.uk (the Payment Systems Regulator Limited)

[redacted]

[redacted]
To: Martin Wheatley
Cc: [redacted] Zitah McMillan; [redacted]
Sent: Thu Jan 17 11:12:50 2013
Subject: Interest rate swaps announcement - 31 January

Martin,

As you are aware, we have committed to providing a public update on our work on interest rate swaps by 31 January to the APPG. This is already of interest to journalists - and both ITN and C4 have expressed an interest in speaking to us at the time.

Given the level of interest and the media focus on our announcement last June, I think that we should be agreeing to do some broadcast interviews to explain where we have got to with our work.

So my recommendation is that I should pre-arrange some interviews for you for the 31st - with ITN, C4 and possibly the BBC and Sky. Given the problems of doing these live, I will aim to do them as pre-recorded interviews. Ideally this will be here at the FSA, but it may be necessary to go to the Millbank studios. It is also possible that we will be approached by the Today programme, but at present it is not clear whether we will be in a position to publish the outcome of our work by 7am; this will be clearer nearer the time

You are already due to be interviewed that morning by the BBC for the Money Programme, but this is not due to be broadcast until March and is focused on the financial crisis.

Grateful if you could confirm that you are content with the proposal above.

[redacted] | Communications Division |

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[redacted]

www.fsa.gov.uk