

PRESS RELEASE: *JUDGMENT HANDED DOWN IN LANDMARK JUDICIAL REVIEW AGAINST THE FCA*

FOR IMMEDIATE RELEASE

All-Party Parliamentary Group on Fair Banking Press Release | 07.03.25

Today, the Court handed down its judgment [[Link](#)] in the All-Party Parliamentary Group (APPG) on Fair Banking's judicial review against the Financial Conduct Authority (FCA) regarding the FCA's decision not to do anything in response to the findings of the independent reviewer, John Swift KC, that it was "*wrong*" to exclude thousands of 'sophisticated' victims from the Interest Rate Hedging Product (IRHP) Redress Scheme.

The judgment follows the APPG successfully obtaining permission from Mr Justice Fordham in 2023 to pursue the claim [[Link](#)], obtaining disclosure of important contemporaneous documentation from the FCA, and the trial which was held 10-11 December 2024.

In the detailed judgment, the Court found that the findings of Mr Swift KC were the product of considerable work and reflection, and that Mr Swift KC was both independent and a distinguished expert, but ruled that there was scope for reasonable disagreement with his findings. The Court therefore found that the FCA's decision to take no further action was not irrational and did not meet the standard required to be overturned by way of judicial review. Among other considerations, the Court focused on the fact that the FCA opted to accept the sophistication test put forward by the banks – which led to the exclusion of customers – under pressure from the banks and, allegedly, facing the prospect of losing any prospect of redress at all.

The Court also held that FCA's approach of publishing its decision to do nothing on the same day that it published Mr Swift's report without giving those affected a chance to be heard was not conspicuously unfair, on the basis that the FCA was already aware of the issues which would likely be raised on consultation.

The APPG is disappointed by today's judgment which means that thousands of IRHP victims will not receive the benefit of any redress for wrongs they have suffered.

The APPG is also concerned by the judgment's wider implications. It gives rise to a risk that any regulator under sufficient pressure could be forgiven for taking a bad deal at short notice – regardless of their broader statutory powers and how that decision was made. This is a particularly important point given the FCA's current investigations, for example on motor finance.

Further, the APPG is concerned that the Court's findings that the difficulties of gathering evidence posed by the lapse of time since the FCA's decision to exclude 'sophisticated' victims from the Redress Scheme allows regulators to rely on their own delays to support their decisions. This is of particular concern since long timescales are common in financial services scandals, such as the HBoS Reading fraud scandal.

Additionally, the Court's acceptance of the FCA's decision not to consult stakeholders on the basis that it already knew the criticisms to which it was likely to be subject is troubling. This would allow a regulator to substitute the views of interested parties for its own belief as to what would arise from a consultation. It may discourage interested parties from ventilating concerns, because that will mean they lose the benefit of a formal consultation.

Whilst the APPG is disappointed by today's ruling, it is encouraging that the Court gave short shrift to the FCA's arguments that the banks had a legitimate expectation that the FCA would not exercise its powers due to the terms of the agreement made between the FCA and the banks. The FCA was and is not precluded from using its statutory powers to continue to seek redress in this case.

As noted by the Court when granting permission for the APPG to bring the claim, the arguments advanced by the APPG are of general public importance. The APPG is considering its options following the judgment, including an appeal. It in any event hopes that the FCA reflects on these matters and the proper use of its powers as a public regulator.

The APPG is very grateful for the support of stakeholders, including contributors to its legal costs via CrowdJustice [[Link](#)], who made this action possible. The APPG was represented by Ned Beale, Simon Bishop, Rachael Baillie and Alex Cooper of Hausfeld & Co LLP, instructing Thomas Roe KC (3 Hare Court) and Anna Lintner (Maitland Chambers).

For further information or press queries, please contact:

Hugo Mann, Campaigns and Programme Manager - The Athena Foundation

hugo@theathenafoundation.org.uk

+44 7764 862485
