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https://hansard.parliament.uk/Commons/2012-06-21/debates/12062137000003/InterestRateSwapProducts?

Guto Bebb (Aberconwy) (Con) I beg to move,

That this House has considered the matter of the mis-selling of interest rate swap products to small and medium-sized businesses; notes the work undertaken by the Financial Services Authority in this respect; and calls for a prompt resolution of the matter.

I thank the Backbench Business Committee for awarding me the debate. It has received a number of fine applications for time in the main Chamber and I am grateful for the opportunity to raise the issue of the mis-selling of bank interest rate swap products. A number of colleagues have indicated their willingness and a desire to speak in the debate, so I shall try to be as concise as I can in my opening remarks.

The issue came to my attention in dealing as an MP with the hassles raised in constituency surgeries. It is a great advert for doing surgeries: we never know what will come through the door. Back in the autumn of last year, a constituent came in to talk about interest rate swaps, collars, caps and similar things. I was a self-employed business person for 15 years before I was elected to this place, and it crossed my mind that this business man who was talking about the loss of his business and his hotel and the potential loss of his house might be finding an excuse for his business failure. I am not a hard-hearted individual, but I have been in business for a long time and I have the view that there is the rule of buyer beware in transactions with banks and other financial institutions. I therefore listened to his case attentively but with a degree of scepticism, wondering whether he was looking for an excuse for what happened to him.

The more I listened, however, the more I thought that there was something that I should look into, and the crux for me came when I tried to get hold of the verbal agreement between my constituent, Mr Colin Jones, and his bank. It took us a long time to get the bank to allow us to see a transcript of the verbal agreement, and by that point I understood something about the nature of interest swap derivatives and what was meant by swaps, caps and collars. I had a degree of understanding that we were not considering a straightforward financial product.

MP sitting in 2018	Party
John Healey	Labour
Damian Collins	Conservative
Andrew Tyrie (TSC)	*Conservative*
Nicky Morgan	Conservative
Mark Tami	Labour
Steve Baker	Conservative
Glyn Davies	Conservative
Emma Reynolds	Labour
Dominic Raab	Conservative
Caroline Nokes	Conservative

Jonathan Edwards	Plaid Cymru
Mark Garnier	Conservative
George Eustace	Conservative
Geoffrey Cox	Conservative
Mike Freer	Conservative
Gary Streeter	Conservative
Neil Parish	Conservative
Jake Berry	Conservative
Karen Bradley	Conservative
Caroline Lucas	Green Party
Peter Aldous	Conservative
Heather Wheeler	Conservative
Chris Heaton Harris	Conservative
Matthew Hancock	Conservative
Andrew Jones	Conservative
Mark Menzies	Conservative
George Freeman	Conservative
Chris Leslie	Labour
Helen Goodman	Labour

Mr Andrew Tyrie (Chichester) (Con) *rose—*

Guto Bebb I will, of course, give way to the Chair of the Treasury Committee.

Mr Tyrie I am grateful to my hon. Friend for securing this important debate. As he will know, the Committee is already looking into this matter and has written to the FSA and the Financial Ombudsman Service asking them to investigate fully and get back to us. He may not be aware, however, that we also raised this issue with the chairman of the FSA, who has promised to provide a progress report by the end of July. **The Committee is extremely anxious, not least because a number of its members, including me, have seen constituents with exactly the sort of complaint my hon. Friend outlines.**

Guto Bebb I am aware that the FSA has promised to provide a progress report, and I sincerely hope that that will be with us before the end of July, if not sooner. **My concern is that businesses are being put into administration as we speak—we have seen examples of that this week alone—and in the current economic climate we should not accept the loss of any businesses or jobs as a result of mis-selling.**

Nicky Morgan (Loughborough) (Con) Do we not also need to get on with it because lots of claims are time-limited? Some of my constituents have only until October this year to launch a claim, and they need to know the position of the FSA and the Financial Ombudsman Service so that they can decide whether to have recourse to the law.

Guto Bebb - That is an important point. As many of these products were sold from 2006 onwards, many affected businesses are now watching the clock run down on their opportunity to take action. That crucial point should resonate within the Chamber and outside.

Steve Baker (Wycombe) (Con) - **I would like to offer my hon. Friend an explanation of why banks are doing this kind of mis-selling. In my private Member's Bill last year on the regulation of derivatives, I explained how mark-to-market rules allowed banks to up-front unrealised cash flows to declare profit immediately on moneys that they have not received. I wonder whether the Treasury Committee will investigate whether that is a key factor in encouraging this bad business.**

Guto Bebb **Small businesses that have to take legal action also face the risk of losing the support of their banks. There are examples of loans being called in or overdraft facilities being taken away from businesses that are taking action. I therefore do not think that the way forward is necessarily to expect individual businesses to take action against the banks, unless we can have some certainty that the banks will not act in that way.**

The scale of the problem is significantly greater than we have accepted to date. Today the *Law Society Gazette* gives the figure of about 4,000 businesses affected, with about £1 billion-worth of potential claims. In my view that figure is probably an underestimate, so the scale of the problem should be taken seriously.

Let me state what I am calling for from this debate. It is very easy to have a debate in which we all highlight our concerns about individual businesses and our belief that the banks have behaved badly, but this House has a responsibility to try to offer a solution. **We need to encourage the Financial Services Authority to move more quickly to a resolution of this issue. It needs to inform the banks that, for example, they have an obligation and a responsibility to act fairly with their clients. We also need some transparency from the banks about the exact size of the problem. We know, for example, that between 2006 and 2010 the banks engaged in significant amounts of swaps. Some of them might have been completely legitimate, but quite a few were sold to small businesses.**

Those small businesses are feeling under pressure from their banks**, so my specific request today is for the Minister to call on the FSA to give written assurances that the banks will not adversely treat any business that makes a complaint.** We live in a country governed by law. If a business wants to make a complaint, it should not be subject to undue pressure from its bank. In the same way, if a complaint has been made to a bank or the FSA, the bank should refrain from foreclosing on that business. Those are my short-term requests for the Minister. In the long term, I think it is crucial—

Emma Reynolds I shall not speak for much longer, as I know others want to contribute.

Let me end by asking the Minister a few specific questions. **Will she reassure us that the Government are taking this issue seriously? What are the Government doing to ensure that SMEs struggling with these swap agreements are supported in the short term and will not have punitive measures imposed on them by the banks if they complain? What steps are the Government taking to ensure that this practice will not happen in future? Do they have any idea of the time scale for the Financial Services Authority report?**

Mr Dominic Raab (Esher and Walton) (Con) The hon. Lady is making her case in a typically powerful way. **One of my constituents sought legal recourse against Barclays and was subsequently threatened with foreclosure of his loan, which would result in him being forced to sell his house, even though he was not in arrears, unless he signed a waiver removing his right to take legal action. Does the hon. Lady agree that such punitive action is utterly unconscionable?**

Emma Reynolds I think it is utterly disgusting that this is happening. **We are told that our banks are too big to fail. They have taken advantage of significant Government intervention, yet now we find**

that they are not even supporting viable small businesses across the country. Something needs to be done about this urgently, so I look forward to hearing what the Minister has to say.

Damian Collins My hon. Friend mentions that the **exit costs had not been properly explained**. Does he share my concern about this issue, as my constituent is in a situation where what were called "negligible" exit costs ended up being worth more than 50% of the value of the loan?

Jonathan Edwards (Carmarthen East and Dinefwr) (PC) Diolch, Mr Deputy Speaker, I am grateful to you for the opportunity to speak. As others have done, I congratulate the hon. Member for Aberconwy (Guto Bebb) on his hard work and on securing this debate on the Floor of the House.

Two constituents have visited my surgeries to highlight the problems they have endured as a result of these complex products. I shall not pretend to understand how they work, but the end result has been devastating for my constituents' businesses. **I am therefore glad to learn today that the FSA is to investigate and the Treasury Committee has interest rate swap products on its radar.**

What strikes me in the cases brought to my attention is the aggressive manner in which the products were sold to businesses, often by bank managers who had been dealing with the businesses for some years. It is clear to me that local bank managers were under orders to sell the products, without themselves understanding what they were selling. Relationships with local businesses are built up over a number of years, so those businesses would have trusted their local bank manager. After the initial meetings, specialist teams were brought in to process the deal. The business men who came to see me in my surgery said that they felt under enormous pressure to sign up to the deal. They were told that only a small window of time was open to them to take what was deemed to be the opportunity of a lifetime.

Mark Garnier My hon. Friend has almost been reading my speech, because I am about to finish on that point. **There are mismatches of terms and objectives, and on this issue I have a fundamental problem with the banks. A bank manager used to be a customer's friend, whom they could turn to for financial advice, who would look after them and who, much more importantly, had their interests at heart. The problem is that banks are now simply salesmen looking for another product to sell, and it does not quite matter to them what holistic package is being sold as long as an individual product is.**

I simply do not understand why the banks are failing to get the message that they are breathtakingly unpopular. They have really made a pig's ear of our economy and financial system, so why do they continue to do so—in the face of the public opinion? It does not make any sense, so I make this appeal to the banks: please take a look at this issue. If you have created what should be a collar and cap arrangement, but it turns out to be a cap and noose arrangement, negotiate with your customer, help them out, stop feeding solicitors lots of money and try to resolve it in order to get back to a situation where bank managers are people we can trust.

Caroline Lucas (Brighton, Pavilion) (Green) I am almost reluctant to interrupt the hon. Lady because she is making such an eloquent case and is giving a very useful economics lesson at the same time. I have been contacted by a number of my constituents who have been badly burned by these toxic products. **Does she agree that the experience she describes of the small business person in her constituency, Mr Wardle, is being repeated right across the country? Indeed, there will be many cases that we do not know about because many people are loath to speak out against their bank for fear that they will have problems with their business reputation. Does she agree that the issues we are discussing are probably the tip of the iceberg, which makes action even more urgent?**

Peter Aldous (Waveney) (Con) I am grateful to my hon. Friend the Member for Aberconwy (Guto Bebb) for raising this important issue and for campaigning on it with such determination.

I wish to draw attention to a case study concerning a medium-sized business in my constituency, setting out its experiences and seeking to draw some lessons from them. **At this stage, the business wants to remain anonymous, as it is seeking to resolve the matter with its bank without recourse to legal action and it does not wish to prejudice those negotiations.**

In 2005 the business entered an interest rate hedging transaction that ran for five years. At the outset, taking into account the immediate outlook for the economy and for interest rates, there was some logic to such an arrangement. In May 2008 the bank contacted the business, recommending and urging it to renew the arrangement for another five years, even though the agreement was not due to expire until 2010, more than two years away. During the ensuing three to four months, the customer continued to receive correspondence and telephone calls from the bank encouraging renewal.

At a meeting on 15 August 2008, the matter was discussed more fully. Subsequently, on 29 October, more than two months later, my constituent sent an e-mail to the bank advising it that he did not wish to renew the agreement. On 4 November he received a contract from the bank for signature. The bank told him it was confirmation of the verbal agreement reached on 15 August. Under pressure, not wishing to upset a business arrangement with his bank that had been in place for many years and at a time when the economic outlook was uncertain and the customer was keen to keep on good terms with the bank, he signed the agreement.

Earlier this year, my constituent decided, having sold a property, to bring the agreement to an end, so he contacted the bank to establish the cost of doing so. He was advised that that would cost more than £72,000. Up to today, the whole arrangement has cost him £162,000 in interest charges, which are predicted to have risen to £200,000—40% of the value of the loan—by the end of the arrangement in September 2015.

I have three observations on that chain of events. **First, in whose interests was the bank acting? Its own or its customer's? Why did it put pressure on him to renew the agreement when there was no need to do so for another two years, until 2010? In 2008, taking into account the outlook for interest rates and their likely future movements, there was no incentive or reason for the customer to rush to renew. It would have been much better to see what would happen over the following two years. Any independent adviser acting in the company's best interest would have advised it to do that. In my view, the bank's actions were dictated purely by its own self-interest rather than the best interests of its customer.**

Secondly, the bank appears to have been incompetent at best, and at worst to have adopted underhand tactics in putting pressure on the customer to renew the agreement. Obviously what happened at the meeting on 15 August is subject to disagreement, but I personally accept my constituent's version of events. Surely the best practice for the bank to have pursued would have been to take its customer through the arrangement step by step at that meeting and, if there was a verbal agreement, to produce a contract immediately and not two months later. A further meeting should have taken place, to go through the contract line by line, until the customer was fully aware of the implications before signing. The fact that the bank did not send the contract for two months, and

only did so because it received an e-mail from its customer indicating that he did not wish to proceed, shows it in a very poor light.

Thirdly, there is a clear failure by the bank to provide full, independent and impartial advice that sets out the pros and cons of the transaction, in particular the cost of breaking early. If my constituent had been aware of all those factors, he would not have renewed the arrangement.

I am keen to give other hon. Members the opportunity to state their case, so I will conclude with two points. **First, this whole matter needs to be addressed straightaway and given high priority by the FSA, and a framework should be put in place for cases to be investigated quickly with proven claims settled immediately. We do not want this scandal to drag on for years, because that could undermine the very businesses on which the economic recovery needs to be built.**

Secondly, **we need a banking system that is regulated and run in a way that prevents such conflicts of interest. In the case I have described, the bank was clearly acting in its own interest rather than that of its customer.**

Mr Williams ……..

I have been in touch with the Federation of Small Businesses about this, although I did not need to do so, as it was already aware of the numbers of alarming cases elsewhere, many of which we have heard about in the debate. My constituents inform me that, in the years following the sales of swaps, banks have been guilty of compounding the problems of the SMEs that have them—alarmingly, in some cases particularly of those that have had the bravery to complain. That is acutely worrying.

There are many further points that need consideration, not least the issue of redress. The most powerful message that we can send out today is that the Financial Services Authority should speedily produce its report into the extent of the practices involved. At that point, I am sure that the House will wish to take the matter further. **I think it was the hon. Member for Ayr, Carrick and Cumnock (Sandra Osborne) who mentioned the need for urgency, especially in the light of the six-year time constraint. My constituents face the prospect of having to take action by February next year.** Theirs is a functioning business, and this House is supposed to support functioning businesses in these dire economic times. There is a phrase in Welsh, chwarae teg, which means “fair play”, and that is what is now needed.

Mr Jones I thank my hon. Friend for his comments. He is absolutely right to say that these products were not suitable for the type of business that he mentioned. As chair of the all-party group on town centres, I take a great interest in town centres and high streets. At this difficult time for them, the type of business that he mentioned can do without this type of additional pressure.

In the short time available to me, I wish to return to the recourse that businesses have and talk a little about the ombudsman and the Financial Services Authority route. **Whether businesses take the ombudsman route, the FSA route or the route of going to law, one of the biggest problems small businesses face is that at the outset they have to divulge all the information about the particular case. They particularly have to divulge the information about the bank and a lot of information has to be gathered from the bank. As we have heard from hon. Members from across the Chamber, many small businesses feel that they are not in a position to do that because they feel that they will be prejudiced by that bank**

in relation to other loans and borrowing facilities that they hold with it. They find it difficult to move these things to other banks, because they may, for example, be in negative equity with property because of the economic situation.

So I wish to ask the Economic Secretary to the Treasury a number of questions. **First, will she press the banks to give a clear and unambiguous commitment not to treat any complainant unfairly in other dealings between a business and a bank? Secondly, what steps will she take to persuade the banks to do the right thing at this point and support those small businesses that have been caught out by these products that have been inappropriately sold to them by the banks? Thirdly, will she write to the FSA to set out the concern of the House, to ask the FSA to expedite the work it is undertaking on this matter, to stress the importance of a thorough investigation with teeth and to ask it to look at the criteria that the ombudsman can use, because they are narrow at the moment for small businesses and the level of compensation is very low? I fear that if we do not do that at this point not only will the small businesses be disadvantaged, but we will also risk similar mis-selling scandals occurring in the future if the banks are not brought to account.**

The Economic Secretary to the Treasury (Miss Chloe Smith) I have listened to and considered carefully what hon. Members have said today and will try to respond to as many Back-Bench points as possible. I suggest that it is not really a day for a great political answer. Instead, I want to talk about some of the detail of what is happening in this instance. To name but a few of the contributions that have been made, we heard a passionate contribution from the hon. Member for Wolverhampton North East (Emma Reynolds) and we heard from my hon. Friend the Member for Staffordshire Moorlands (Karen Bradley), who explained the issue in terms of tea and strawberries—I wondered whether to intervene to ask her what would happen if someone liked tea and strawberries together, but today is a day for much more serious material….. The House needs to be reassured that the Government have taken this issue extremely seriously. The FSA, as the independent regulator, is responsible for determining the appropriate regulatory response, but today I can update the House on what the FSA is doing and when it will be doing it by, and I will respond to a few further points that have been made today.

Another real telling point from today's debate was the number of times that hon. Members repeated the call for anonymity on behalf of their constituents, and that really brings home the seriousness with which we need to take the subject and, of course, the serious consequences that businesses are facing.

Guto Bebb I thank the Minister for her update on the position of the FSA, which has moved significantly from its initial responses to my communications early this year; I respect the fact that it is moving in the right direction. **However, it should be aware that Members on both sides will be looking carefully at its comments at the end of the month.**

I also concur with the comments of the shadow Minister, who stated that the House can, at times, perform much better than it does at PMQs. This debate has been extremely positive. **What has really pleased me is that contributions came from Members representing five political parties.** There have been 14 excellent speeches and numerous contributions from Back Benchers stating that the issue is a concern across the country.

The issue has lain dormant for too long, and there is a real concern about the attitude of the banks towards the businesses. **Even today, Members have said that they cannot name individual businesses because those businesses are scared of the banks' taking action against them. That is a real concern.** We need to move forward and to have transparency and openness. We need to

identify the scale of the problem and the FSA needs to take a decision showing that as a regulator it has teeth and it will have an effect on the situation. I commend my motion to the House.

Question put and agreed to. *Resolved,*

24 October 2013 Volume 569 11.27 am

https://hansard.parliament.uk/Commons/2013-10-24/debates/13102453000001/InterestRateSwapDerivatives?

Guto Bebb (Aberconwy) (Con)

I beg to move,

That this House **considers the lack of progress made by banks and the Financial Conduct Authority on the redress scheme adopted as a result of the mis-selling of complex interest rate derivatives to small and medium businesses to be unacceptable; and notes that this lack of progress is costly and has caused further undue distress to the businesses involved.**

I am surprised to be back here 15 months after the first debate on this important issue. I appreciate the Backbench Business Committee—the Chair is in her place—once again offering time to debate it. The first debate made a significant difference. Prior to that debate, the Financial Conduct Authority and the banking sector were refusing to acknowledge that there was an issue that needed to be dealt with. A few days after the first debate, that changed and a pilot scheme was announced.

Members who have followed this issue carefully are aware that the pilot scheme found that **approximately 91% of cases investigated between July 2012 and January 2013 had a technical mis-selling, so the process has highlighted the mis-selling of these products.** The House should take some comfort in knowing that securing the second debate has also resulted in a significant concession from the banking sector. Members of the all-party group on interest rate mis-selling have argued long and hard that the redress scheme had a central flaw, which is that the technical redress for the mis-selling of interest rate swap derivatives and the consequential losses were linked within the redress scheme. That gave the banks in question a significant advantage, because small businesses facing heavy cash-flow problems were inclined perhaps, under the scheme as it stood, to accept an offer of technical redress without fighting hard over consequential losses, simply because they were desperate for the cash.

As a result of the announcement of this debate last week, HSBC said on Tuesday that it was separating the technical redress from the consequential losses, and other banks have followed. My first call today, therefore, is for the rest of the banks involved in the redress scheme to follow HSBC's and RBS's lead. It is several months too late, perhaps, but it is the right decision, and we want to see the other banks following.

MP sitting in 2018	Party
Mark Tami	Labour
Jack Straw	Labour
Graham Stuart	Conservative
Steve Brine	Conservative
Jim Cunningham	Labour

Kelvin Hopkins	Labour
Mark Prisk	Conservative
John Baron	Conservative
Richard Fuller	Conservative
Richard Benyon	Conservative
Clive Efford	Labour
Mark Garnier	Conservative
Stephen Metcalfe	Conservative
Pat McFadden	Labour
Stephen Lloyd	Independent
Steve Baker	Conservative
Nia Griffith	Labour
Ian Murray	Labour
Robert Syms	Conservative
Shabana Mahmood	Labour
Neil Parish	Conservative
George Freeman	Conservative
Andrew Bridgen	Conservative
Andrew Jones	Conservative
Chris Heaton Harris	Conservative
Martin Jones	Conservative
Caroline Nokes	Conservative
Gary Streeter	Conservative

Mr Jim Cunningham (Coventry South) (Lab) The hon. Gentleman mentioned the situation facing small businesses. **Does he agree that some small companies are afraid to challenge their banks because their loans could be cancelled?**

Guto Bebb That concern has certainly been raised, but I keep receiving assurances from the banks that that is not the case. I want to take those assurances at face value and would still recommend that anybody who has been sold one of these products should undoubtedly go and talk to their banks. **If the banks are unsympathetic, they should come and talk to their MPs, because we can and should intervene.**

Stephen Mosley Is it not the case that some customers do not know that they have been sold swap agreements? **Some people have been sold hidden swaps and do not know about it. Does my hon. Friend not think that the banks have a duty to inform customers themselves if they sign people up to such agreements?**

Guto Bebb I am grateful for that intervention. **I will come to hidden swaps later—"embedded swaps" is the technical term; "hidden swaps" is a fairer way of describing them—because they are a big issue and we need to address them.**

The setting up of the redress scheme was the reason why we called this debate. It has taken months to reach an agreement to ensure consistency across the 11 banks involved. Originally we were told that Christmas was the deadline for completion. **However, at this point in time there are 30,000 businesses in the cohort—I think that that figure is an underestimate, because of embedded**

swaps, for example, and the way the sophistication test works—so frankly the Christmas target will not be met.

Mr Mark Prisk (Hertford and Stortford) (Con) I am grateful to my hon. Friend for giving way; he is doing a fantastic job. It is becoming clear to businesses in my constituency that, in the absence of any penalty after the current agreement—which, of course, is voluntary—**the banks are just playing for time.**

Guto Bebb That is an important point—that the banks are possibly playing for time—which I think will be touched on in other speeches in this debate. As for the ability of businesses to try to get compensation through litigation**, it is important that they take action to protect their positions. The redress scheme is a step forward. It is not working perfectly, but I would still advise businesses to protect their position from a legal point of view.**

Guto Bebb I could not agree more with my hon. Friend. **The expectations back in 2007 were that interest rates would go down, yet there were numerous examples of bank sales teams informing businesses that they needed to protect themselves against a rising interest rate scenario—contrary to the information that the banks themselves had. …….**

Embedded or hidden swaps, which are currently excluded from the redress scheme, are another key issue to highlight and a matter of huge concern. If we think about it, a hidden swap is quite possibly worse because businesses were not even aware that they were also taking out with their fixed-rate loan an interest rate derivative product. The American author, James Riley once said:

"If it walks like a duck, and swims like a duck and quacks like a duck, then it must be a duck."

The same point needs to be made about these hedging products. If the impact of an embedded swap is the same as the impact of a separate hedging product taken out with it, it is difficult to argue that the small businesses that were sold those products should be excluded because of a technicality relating to whether they are subject to the FCA regulations. I ask the Minister to respond on that specific issue.

Guto Bebb I am afraid that I cannot take another intervention.

The issue of hidden swaps is important and needs to be addressed. We need to know why businesses to which they were mis-sold have been excluded from the redress scheme. Thousands of businesses have been mis-sold these products, banks have admitted that the products were mis-sold, and yet the redress scheme is not, as yet, performing as it should. I am not looking for a new scheme, but I am looking for changes, and much greater speed, in the scheme that we currently have; and I think that we need to address some of the exclusions, which are clearly unfair.

Several hon. Members *rose*— **Mr Speaker O**rder. **More than 20 Members are seeking to catch my eye**. We have also to hear, very properly, from the Minister and the shadow Minister, and I envisage the debate finishing at approximately 2.30 pm, at which point we shall need to move to the next debate. In recognition of all those considerations, I am imposing a limit of six minutes on Back-Bench speeches, with immediate effect.

Natascha Engel (North East Derbyshire) (Lab) It is a pleasure to follow the hon. Member for Aberconwy (Guto Bebb), and it was a pleasure to see him before the Backbench Business Committee again, although we had hoped that the position would be resolved on the first occasion when he appeared before us. It was also a pleasure—here I echo the sentiments of other Members—to be a

member of his all-party parliamentary group on interest rate mis-selling. **The group has demonstrated the power and effectiveness that all-party parliamentary groups can display when they are organised around a single issue, particularly when the issue is an injustice of this kind. The Committee was delighted to be able to schedule today's debate, and I hope that we shall have as much effect today as we did all those months ago.**

I want to focus on just a couple of issues raised by the hon. Member for Aberconwy—in particular, the idea of a moratorium, but also the terrible way in which this issue has been allowed to drag on and on. It is not just the banks that are involved; the Treasury is involved as well, and we should also consider the role of the Financial Conduct Authority. **When, many months ago, members of the FCA appeared before the all-party parliamentary group, many of us were unimpressed by their lack of a sense of urgency. Everyone recognised that they wanted the redress scheme to be drawn up properly, but they certainly did not show the sense of urgency that they had shown when signing people up to the mis-sold schemes when it came to the question of redress**.

Greg Mulholland (Leeds North West) (LD) I do not know whether the hon. Lady has experienced the problem experienced by certain other Members. When the hon. Member for Harrogate and Knaresborough (Andrew Jones) **and I wrote to the Financial Standards Authority about a shared case, the FSA replied that it did not deal with individual cases. We then wrote to the Minister, who told us to raise the matter with the FSA. We are going around in circles. Do we not need a different body—possibly even the National Crime Agency—to get a grip on the issue?**

Clive Efford (Eltham) (Lab) My constituency also has a business that has been affected by this. When we wrote to the Financial Conduct Authority, the response was really an apology for the banks, as though this is just some sort of error that has been made. **Does that not underline the fact that there has been a lack of urgency by the regulators, on whom we rely to act on behalf of our constituents when they are wronged in this way? We need more urgency from the regulators; they must get on with their job.**

Natascha Engel That is right and **this whole scandal has shown how it has been possible to pass the blame between banks, the FCA and the Treasury, and nobody will take any responsibility for what has been an absolute scandal.**

Mark Garnier (Wyre Forest) (Con) May I start by adding my congratulations to my hon. Friend the Member for Aberconwy (Guto Bebb), who has not only been brave in what he has done on this matter, but has shown outstanding leadership in a technical, complex issue?

I wish to develop a couple of points, the first of which has started to resolve itself**. I am talking about the big question of the linking of consequential loss to the technical redress. Clearly, the technical redress is people's money—that is an agreed thing, and it is only right that it should be paid as soon as possible. The consequential loss was always a separate issue, and to have linked it was completely the wrong thing to have done. HSBC has broken ranks and RBS is following suit, and Martin Wheatley is now coming on board, saying that there should be no conditionality between the technical redress and the consequential losses claims. That is a good thing; it is excellent progress, and we can thank my hon. Friend for his work on that.**

Mark Garnier That is absolutely right. Part of the problem, however, is that the banks have an incentive not to get in touch with people, for obvious reasons. That relates to the second point I wish to develop. It is a technical point, but it is incredibly important in terms of why it is incentivising

banks to delay technical redress for as long as they can, and it has implications for the financial stability of the banks.

We should not think of these things as stand-alone products, but should recognise them for what they are. They are not stand-alone products; there is another side of this trade. They are swaps for a reason, and it is important to understand what a swap is. Any one of our victims will have been persuaded to take out a contract with the bank that has the beneficial effect of capping interest rate payments at a certain level. That is a virtuous thing and we are all familiar with the financial planning behind the thought process, through things such as fixed-rate mortgages. But these are not fixed-rate mortgages; they are stand-alone products that relate to a loan, but are not part of that loan. Importantly, many people have paid off the loan but still have the outstanding liability on the swap. The quid pro quo of having a fixed cap on interest payments is the collar that has caused so many problems for our victims, whereby they have to pay a relatively high rate of interest in today's terms. What is not fully understood is that this is not a simple contract with the bank, as it first appears. The bank is not taking a naked bet with its customers that, in the environment of falling interest rates, it has won. It is not receiving as profit the penalty in the increased premiums being paid in interest rates by the victim, because for a swap to actually be a swap, there is a matching trade with a third party on the other side. **What the banks receive in higher interest rate payments they are paying to an opposing and third-party counterpart on the other side.**

I shall now go into a bit more detail. Businesses may want to make sure that they do not pay too high an interest rate; that is why they are persuaded, rightly or wrongly, to take the swaps. However, an organisation such as a pension fund needs to guarantee its income should a severe drop in interest rates, such as we have seen, occur. It would want to take a position opposite that of the businesses, which are the victims.

The pension fund will forgo a rise in rates while winning the guaranteed floor rate that it will receive. For a business to have a rate cap at, say, 7%, it will guarantee to pay no less than 5%. For a pension fund to be guaranteed to receive a minimum payment of 5%, it would agree to receive no more than 7%. In that way, the business's and pension fund's interests are perfectly aligned in opposition.

As both the pension fund and business are clients of the bank, the bank does two simultaneous trades—one with the business, to cap and collar the rate payments, and the other with the pension fund, to collar and cap the interest rate receipts. The bank makes a small margin, but essentially its liability, if everything stands up, is perfectly and oppositely aligned. That is the symmetry of liability and the basis of the swap market.

Mark Garnier I see that my hon. Friend wants to intervene, but may I develop my point?

The financial redress scheme has a specific value, based on a number of factors—including, crucially, interest rates and time. Similarly, time to run is a key component of the value of the other side of the swap. With interest rates so low, the longer the time to run, the higher its value to the customer and the higher the liability to the bank. As a result, we get a built in incentive for the banks to delay settlement for as long as possible. With each day that goes by, the liability on the other side of the swap is reducing.

Harry Wilson, of *The Daily Telegraph*, has put in freedom of information requests to the Financial Conduct Authority to find out exactly what the loss on the other side of the trade will be. Amazingly, nobody seems to have the answer. It seems inconceivable that the banks would not have the information. Any derivatives trading room team, especially on a swaps desk, will have detailed information on the extent of the liabilities; they have to know that. Even if the swaps team does not,

the risk or treasury department should know it—loads of people should know it. It is extraordinary that nobody is coming forward with the information.

The issue has been dragging on for far too long. Too many businesses have failed as a result of it and it is likely that too many more have fallen into that twilight zone of bad forbearance by banks, which sometimes keep otherwise dead institutions alive simply because it is in their interests.

I spent the best part of the last year on the Banking Commission considering the matter. It is worth noting that this crisis happened before the Banking Commission, the financial crisis and the rest of it. However, today the banks have to prove that they have moved on, that they should now be allowed to come into polite society and will do the right thing by the consumer.

Steve Baker (Wycombe) (Con) I, too, pay tribute to my hon. Friend the Member for Aberconwy (Guto Bebb), who has led this cause absolutely heroically. I am sure that Members across the House will wish to join me in saying to my hon. Friend the Member for Wyre Forest (Mark Garnier) that I wish I could say that he had anticipated my remarks. I feel sure that his speech will stand as a landmark in terms of making this debate and these products easy to understand.

The system of money and bank credit ought to be the lifeblood of a free economy and a prosperous society, but as we have heard in this debate, and from across our constituencies, **the banking system is not the servant of a free economy but has become its master, and a tyrannical master at that.** Businesses in our constituencies such as Stewart Linford, furniture makers in High Wycombe, have found themselves treated utterly appallingly.

I hope that my hon. Friend the Financial Secretary will not stay his hand when he criticises the financial system for what it has done. Too often, Government Members treat the banking system gently as if to criticise it were to criticise a free-market system. It is not a free-market system. It is heavily regulated, heavily directed by the state, and awash with implicit and explicit guarantees that produce moral hazard and perverse incentives. Apart from anything else, interest rates have been unexpectedly low because of the interventions of central banks. When Andy Haldane, the executive director of financial stability at the Bank of England, went before the Treasury Committee and explained that the bond market bubble was the biggest threat to financial stability, he clearly stated that the Bank had deliberately inflated it. **The fact is that the system of money and banking is state directed.**

Richard Fuller My hon. Friend is a defender of a system of true free-market principles. He has identified the twin problem mentioned by my hon. Friend the Member for Wyre Forest, which is that**, in addition to the unfunded liability cause, we have now booked the profits and paid the bankers for going through the process that duped the people. Those involved should face criminal sanction.**

Steve Baker My hon. Friend makes an interesting point. I want to live in a free society with a free and commercially successful banking system, but we have to ask ourselves whether the current system has incentivised behaviour that is fraudulent under the law as it stands. The last thing we must do is allow ourselves, in a frenzy of condemnation, to start criticising a system on which our civilisation depends, when that criticism is unjustified. We should be looking at the law as it stands and checking—carefully investigating—whether individuals have broken the law**. I am particularly concerned about IFRS. I do not think it complies with UK company law and think it has incentivised behaviour that is probably fraudulent.**

Banking ought to be simple. It ought to be about connecting depositors with those who wish to borrow in order to invest for productive purposes, such as buying a house or even going on holiday, but predominantly it should be about investing to create real resources and real wealth, and to increase productive capacity and the balance of capital invested per head, so that real wages increase and the cost of living goes down. Instead, we have ended up with a system in which poor state intervention from one end to the other has created so much moral hazard and so many perverse incentives that it has become abundantly clear that a small number of individuals—far fewer than 1% of the population—have captured the state in order to turn implicit and explicit taxpayer guarantees, or bail-out funds, into personal remuneration. It is a disgrace.

The banking system needs to be made honest, and quickly, and part of that is a system of compensation for people who have been treated extremely badly.

Mr Syms I do, and many of the people who have been affected have a lifetime's work in their business—more than one lifetime in the case of many family businesses, which are the bedrock of our constituencies. Those people have been key members of the community and employed many people. Today's debate is therefore important, as we need to give the FCA and the Government a strong message that the authorities must get the banks to get on with it. Things are going too slowly. As we heard earlier, the banks have put forward some billions of pounds for compensation, but they have dealt with only 0.2% of cases. Of the £3 billion that is potentially available for redress, only £2 million has been paid out to 32 businesses, which shows that we need to speed things up.

In many cases, first the capital was sucked out of businesses and then the break clauses were such that many people could not afford to get out of the contracts. With most normal capitalist activity, if someone felt they could not make a go of it, they would sell their business on. However, nobody will buy a business that has the poison pill of an interest rate hedging product because they know that it is a major drag on the business. It is not free enterprise as we know it, and I rather agree with Members who have suggested that the banking system has not done itself any favours.

What is so tragic about the products in question is that people have no way out. We need to get on with achieving compensation. Members have made some good contributions today, and behind every story they have told is tragedy and worry. People cannot sleep at night because they are not sure how to deal with the problem. I say to Ministers and the FCA that we need to get some speed up and get compensation paid. We need to deal with people fairly, and to support and cherish serial entrepreneurs, who should be playing a major role in the economy's recovery, rather than being put in a position of not knowing what will happen in a week, six months or a year. We need to give them our support.

Mr Streeter I completely agree with my hon. Friend. I am expecting robust leadership from those on the Front Bench at the end of the debate, because our constituents have waited far too long.

The shift in culture is to be welcomed, but the point I made last night and make again today is that if the banks want to decontaminate their brand—that is what they are really talking about—it is not enough to change the way they do business today; they have to deal with the past. They have to put right the wrongs of the past and compensate those who have been hurt by wholesale mis-selling of products before 2009.

The realisation by the banks—or some of them—that they need to change their culture is fundamental to our debate today on interest rates swaps. The banks not doing what was right for customers and not being on their side—instead selling them products they did not request, could not understand and were not in their interest simply to rack up commission for the bank and its

managers—is the cause of the problems we are discussing today. A shift in culture is welcome, but the banks must deal with the problems of the past…….

,,,,Talk from bank bosses is cheap. Anthony Jenkins, the new chief executive of Barclays, says that it has learnt its lesson and will put things right. However, in another constituency case, involving a company established in south Devon in 1925, the financial ombudsman determined seven weeks ago that Barclays had mis-sold a swap to the company and ordered it to put the company back in the same position it would have been in if the swap had never been sold. Imagine the disappointment on the part of my constituents when Barclays responded just yesterday by indicating that it accepts only a tiny part of the judgment and intends to fight the rest—so much for the fine words from the chief executive of Barclays. Has Barclays really listened, learned and changed? It does not seem so.

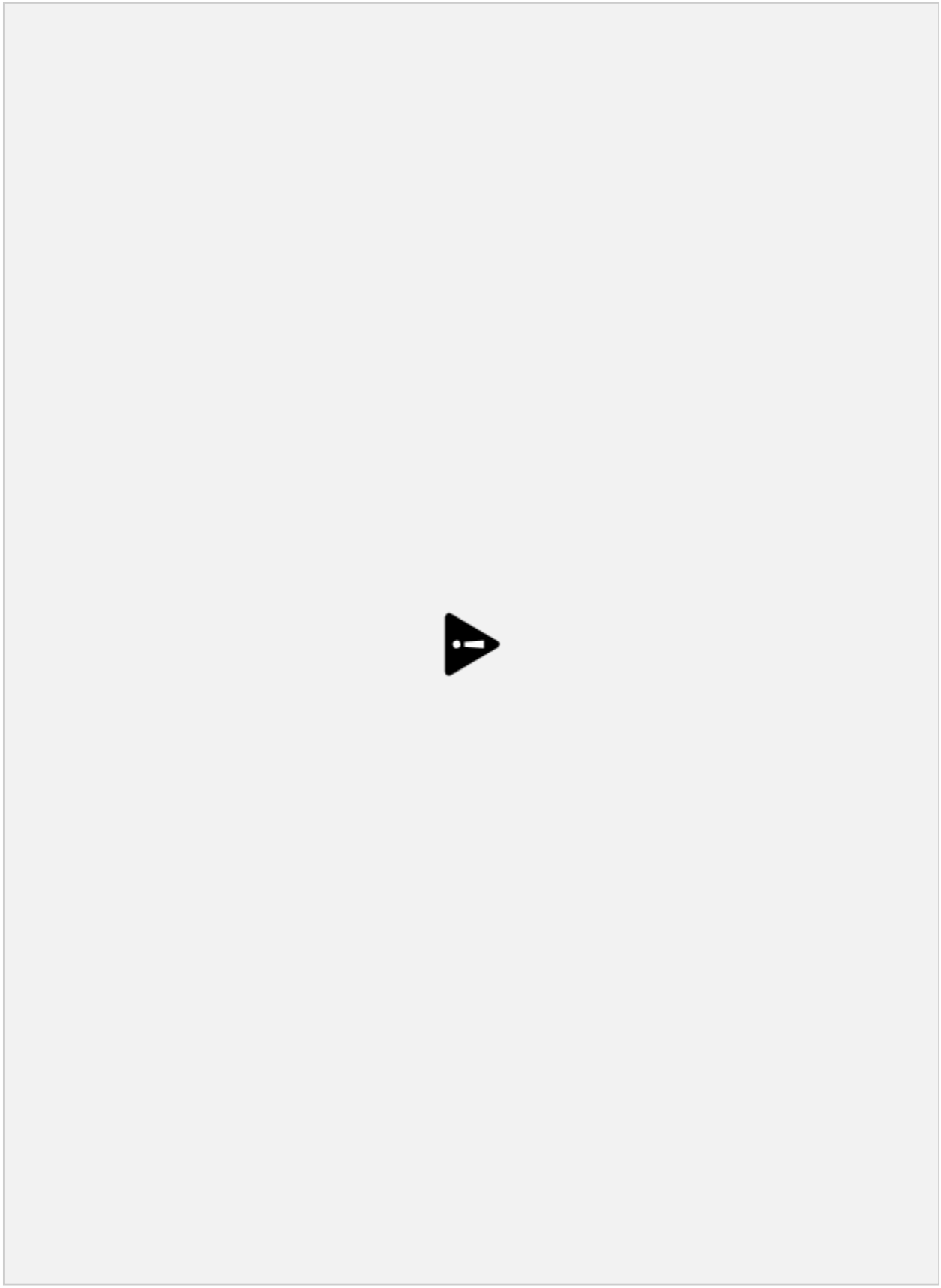
I welcome the fact that there seems to be a cultural shift on the ground in some of our leading banks. This will eventually lead to public confidence being restored, which is very important. Dealing with customers differently today, however, is not enough. **The banks have to deal with the past and only then can their reputations be fully restored, as we all want them to be. The UK needs a vibrant and trusted banking sector.** Chris Sullivan, the RBS UK corporate managing director, insisted last night that this was his intention. He assured me that every case of mis-selling, including that of London and Westcountry Estates Ltd, is being investigated, and that if mis-selling is established it will compensate. I want to say on the record that I am prepared to take him at his word, but need to see the process speeded up.

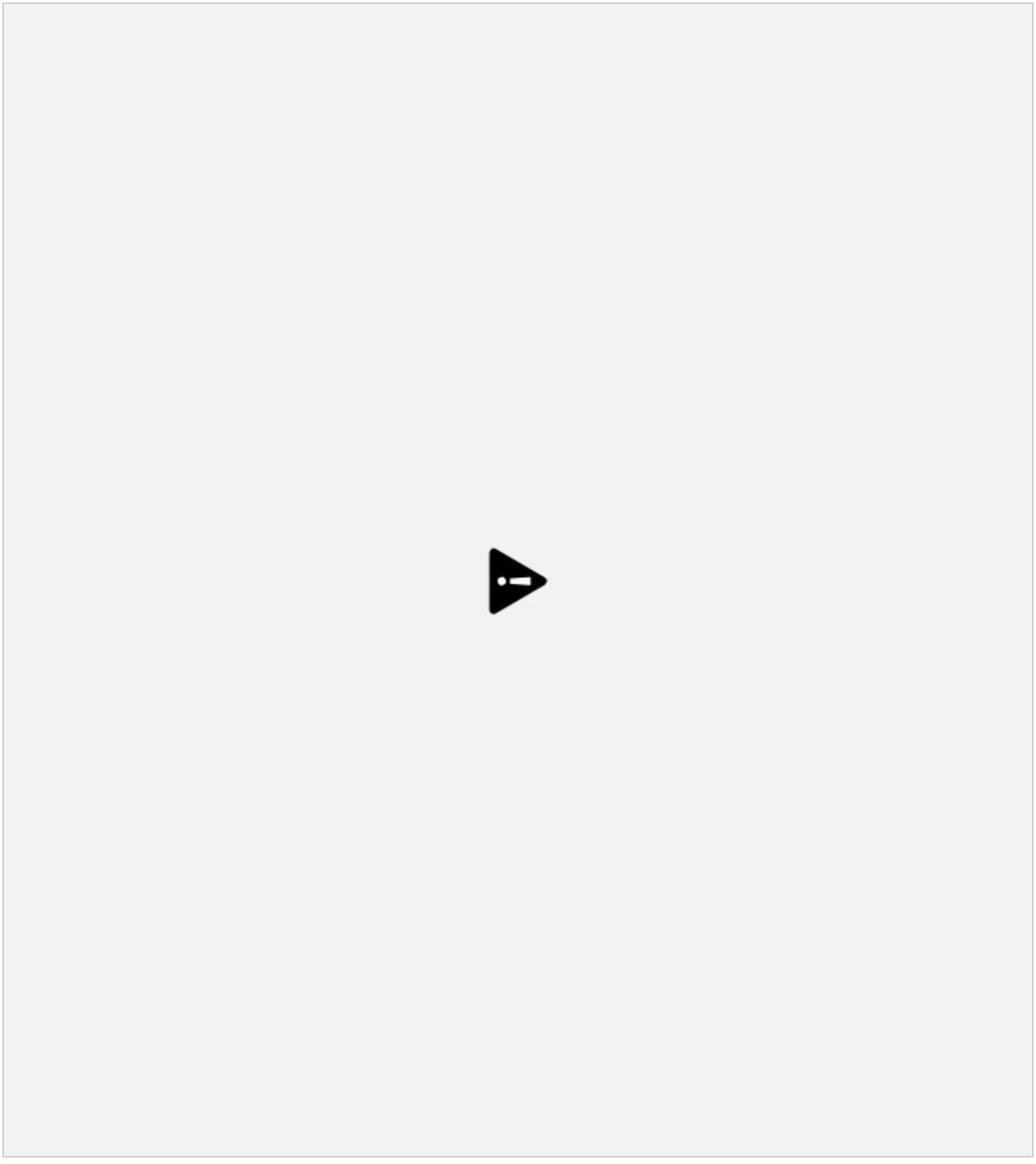
As a taxpayer, I hope we will be able to sell off RBS one day, but I ask the Minister to make it clear to RBS that it cannot go forward with any flotation until it has compensated properly all the small and medium-sized enterprises it has dragged down through mis-selling. The message is clear: the banks have done wrong. Let them deal with the past and compensate their customers rapidly and fairly. Then, and only then, can we welcome a new dawn of helpful banking.

The Financial Secretary to the Treasury (Sajid Javid) I start by thanking all the hon. Members who secured this debate and by congratulating everyone on presenting their case well. Special thanks must go to my hon. Friend the Member for Aberconwy (Guto Bebb) for the time, energy and passion that he has put into this issue and for the leadership he has shown. We can see from this debate that this issue is very serious; 17 of my hon. Friends and four other hon. Members have spoken today**. I am sure that everyone in this Chamber, like all those others watching in the Public Gallery, at home and elsewhere, including the hundreds watching in the Central Methodist hall from the many businesses that have been affected, is keen to see a quick conclusion to the FCA review and to see that those businesses that were mis-sold financial products are compensated accordingly……..**

When I was growing up, my father ran a small family business in Bristol, so I was made aware from a young age about the importance of cash flow and the dangers of unexpected costs. As such, I sympathise wholeheartedly with the small businesses that have been affected by this mis-selling scandal and have put such energy into lobbying on this issue. **This Government have made it clear from the beginning that the mis-selling of financial products is totally unacceptable. We take extremely seriously the abuse that has taken place, and we are determined that any wrongs that have been inflicted on businesses should be righted.** I share the disappointment of fellow hon. Members about the progress made under the FCA review to date. I stood up in a Westminster Hall debate about four and a half months ago to discuss this very issue, and the fact that the FCA has not made any significant progress since that debate is, frankly, not good enough. As we have heard today, the FCA said in January this year that the full review process would begin, but it has since confirmed that the full process did not start until May this year. That delay has been disappointing, and the FCA should have been much clearer about exactly when this full review actually started. However, the

review is now up and running, with the large majority of cases being looked at. I understand from the FCA that it believes that about 85% of cases are now under review, but hon. Members are absolutely right to say that it is time for the banks and the FCA to do more to speed up the process and get redress out the door. **As such, the Government will continue to push the banks and the FCA to complete the process as quickly as possible. As the motion says, the redress scheme's progress has been too slow. That is costly and has caused further undue distress to the businesses involved. The FCA and banks need to get on with the job.**





Bank A is definitely NAB but we never got to the bottom of the others. I personally think that Bank B is Lloyds because complaints seem to be more common than RBS (which is also borne out by the FOS data) and I think that the breakdown into Products E and F are probably Lloyds and HBoS.

Do not forget that the figure of 70,000 is a significant underestimate. Also, remember other institutions (AVIVA, Handelsbanken, Triodos) and building societies (Nationwide in particular) sold them so you can see why I prefer to use the figure of 80,000!

Tuesday 17 June 2014 Oral evidence to the Treasury Select Committee

David Thorburn, Chief Executive, Clydesdale and Yorkshire Banks, and **Debbie Crosbie**, Executive Director, Customer Trust and Confidence, National Australia Group Europe	Q392-525

http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/sme-lending/oral/10753.html

4 Dec 2014 : Column 477

https://publications.parliament.uk/pa/cm201415/cmhansrd/cm141204/debtext/141204-0002.htm#14120439000001

Backbench Debate

Conduct Authority Redress Scheme

Guto Bebb (Aberconwy) (Con): I beg to move,

That this House has considered the Financial Conduct Authority's redress scheme, adopted as a result of the mis-selling of complex interest rate derivatives to small and medium sized businesses, and has found the scheme's implementation to be lacking in consistency and basic fairness; considers such failures to be unacceptable; is concerned about lack of transparency of arrangements between the regulator and the banks; is concerned about the longer than expected time scale for implementation; calls for a prompt resolution of these matters; and asks for the Government to consider appointing an independent inquiry to explore both these failings and to expedite compensation for victims.

This is the third debate that I have led on interest rate mis-selling. I wish to express my gratitude to the Backbench Business Committee for allowing further time to debate this important issue in the main Chamber of the House.

The fact that we have a third debate is a good thing and a bad thing. It is clearly a good thing because hon. Members are still taking an interest in the issue. It is a bad thing because three years after the first debate, hundreds, if not thousands of businesses still feel that they have not been dealt with fairly or adequately by the redress scheme that was put in place by the Financial Conduct Authority. It is therefore important to explore their concerns.

MP sitting in 2018	Party
Bill Wiggin	Conservative
Alok Sharma	Conservative
Sir Oliver Heald	Conservative
Michael Moore	*Liberal Democrat*
Marcus Jones	Conservative
Paul Farrelly	Labour
Mark Garnier	Conservative
Zac Goldsmith	Conservative

Guy Opperman	Conservative
Christopher Pincher	Conservative
Steve Baker	Conservative
Jonathan Edwards	Plaid Cymru
Marcus Jones	Conservative
Daniel Kawczynski	Conservative
Henry Bellingham	Conservative
Bob Stewart	Conservative
Phillip Lee	Conservative

Bill Wiggin (North Herefordshire) (Con): I agree with my hon. Friend, but my constituent John Kidd has so far spent 74 weeks battling the FCA when ideally it should take 12 weeks. My hon. Friend must not be too kind to the FCA.

Guto Bebb: I agree entirely. **The time scales of some of the redress offers have been completely unacceptable.** Indeed, at the scheme's outset there was a six-month delay in order to ensure a consistency of approach across the 11 banks that volunteered to be part of it. One of the concerns I wish to highlight is that that six-month delay has not resulted in the consistency demanded by the FCA, so I accept entirely my hon. Friend's point.

I will summarise my concerns about the FCA scheme. There has been a lack of consistency in the scheme despite it being established with a view to having consistency. There has also been a tremendous lack of transparency, which I will deal with in detail.

Alok Sharma (Reading West) (Con): This is, of course, a **voluntary arrangement that has been entered into. Does my hon. Friend think it would have been better if it had been a statutory agreement, which would have led to much more transparency?**

Guto Bebb: My hon. Friend makes a very important and interesting point. **There was a need at the outset to ensure that the issue of redress was addressed as quickly as possible and it was felt that a voluntary scheme would do that without the need for a fully judicial process. However, in view of the lack of transparency in the scheme as it stands, I sympathise with my hon. Friend's point.**

My third concern is that the redress scheme lacks an appeal process. That issue could be dealt with very simply without creating any further confusion, and I will go on to talk about that in due course. There is also a serious concern about the issue of consequential losses in the redress scheme as it stands.

Sir Oliver Heald (North East Hertfordshire) (Con): On consistency, it is hard to see exactly what the difference is between an embedded swap and a separate swap that is tied to a loan agreement. Is that an issue of concern to my hon. Friend, and what does he think could be done to improve it?

Guto Bebb: I am sure my hon. and learned Friend's point will be supported by thousands of businesses that feel they have been excluded from the scheme. They might not think that it is working properly, but they do feel that they should have been included**. That exclusion has not been explained to the satisfaction of either the businesses affected or the all-party group on interest rate swap mis-selling. Indeed, that is one of the issues I will touch on when I address the scheme's lack of transparency.**

Michael Moore (Berwickshire, Roxburgh and Selkirk) (LD): I pay tribute to my hon. Friend for all the work he has been doing on this issue with others across the House. One of my constituents, Heather Buchanan, and her husband have, happily, got redress, **but they are now in a major battle about consequential losses.** Does my hon. Friend have a view on how we can help collectively focus attention on bad issues so that they are not lost in the murk of commercial negotiations in the banks?

Guto Bebb: I am grateful for that intervention. The issue of consequential losses is of significant concern, because when the FCA redress scheme was established **it clearly said that consequential losses would be dealt with on the basis of accepted legal principles, and yet of the £310 million-worth of consequential losses that have been paid out, £305 million relates only to interest at 8%. In other words, claims for other consequential losses have been derisory under the scheme thus far.**

…….Mr Marcus Jones: I thank my hon. Friend for giving way again—he is being very generous. Does he agree that the FCA should look for consistency rather than simply come to us as constituency MPs when we raise issues and tell us, in effect, that it agrees with a bank's independent reviewer without explaining why?

Guto Bebb: I could not agree more. Put simply, the regulator should be regulating its own redress scheme. It is simply not good enough for the FCA consistently to say that the decision has been approved by the independent reviewer if there are doubts about their behaviour.

Mark Garnier (Wyre Forest) (Con): Will my hon. Friend give way?

Guto Bebb: I will of course give way to a member of the Treasury Committee.

Mark Garnier: I, too, congratulate my hon. Friend on all the work he has done so far. **Given that this is the first time that a voluntary scheme has been used, does he agree that full transparency of the whole system is absolutely crucial in ensuring that the scheme can safely be used again in future?** Otherwise, there will be long-term fundamental doubt about whether it should ever be used again.

Guto Bebb: I could not agree more. I am concerned that some of the banks involved in the scheme now fear that they have played by the rules, while others have not. **If there is no transparency on that issue, banks may go into future schemes with the same attitude as RBS's attitude to this scheme.**

We do not have bank-by-bank details on outcomes, so it is very difficult to measure whether they are appropriate. In the same way, there is real concern that the FCA has not fully shared its legal opinion on excluding businesses with embedded swaps from the whole review process. In the briefing that the FCA provided for this debate, it implies that it has fully shared its information on that with the Treasury Committee, but my understanding is that it was willing only to allow a QC acting on the Treasury Committee's behalf, not its members, to see the information. I do not consider that to be full accountability to Parliament.

I said that I would call on the FCA to consider an appeal process. In view of the revelations about the possible activities of the KPMG reviewers of RBS, there is merit in a proposal made by the all-party group a year and a half ago. All the independent reviewers have been trained to the FCA's satisfaction, so if an RBS client is unhappy with its outcome it would surely be appropriate to ask another independent reviewer—for example, Deloitte, which acts in relation to HSBC—to review the case. That would not unduly complicate the situation, because the reviewers have been trained by

the FCA and have satisfied it as to their expertise. **It would give clients a degree of independence if those unhappy with the redress outcome could have all the case notes reviewed by a third party that is independent of the original bank and of its independent reviewer. Will the Economic Secretary consider that request?**

Guy Opperman (Hexham) (Con): I suggest that there is middle ground on that point. Ministers would probably be nervous of encouraging excessive litigation and the escalation of legal costs, **but it is not beyond the wit of man for an independent mediator to be brought in to address key cases, as is tried in other parts of the dispute resolution system.**

Guto Bebb: I accept that point, but I stress that if an independent reviewer of another bank has been approved by the FCA—the scheme is a voluntary, not a judicial one—I seriously do not think that going down such an avenue would create cost. The FCA's current view is that if a client is not happy with a decision made by a bank and its independent reviewer, then it can resort to law, but the whole reason for establishing the redress scheme was to save small businesses that cannot afford to go to law.

I want to talk in detail about consequential losses. When the redress scheme was announced back in 2013, it was made very clear that the scheme was for consequential losses and interest payable. The Financial Services Authority, as the FCA then was, highlighted that consequential losses would be determined by reference to the general legal principles relevant to claims in tort or for breach of statutory duties.

I have already given the figures. It is more than acceptable and very welcome that £305 million has been paid out in relation to interest at 8%, **but only £5 million has been paid out in consequential loss claims. Part of the redress scheme has therefore completely fallen down. I have seen case after case of well-argued and reasonable claims for consequential losses from businesses acknowledged to have been mis-sold and as a result to have lost millions of pounds in turnover, but when a detailed claim that will have cost a significant amount is made the response from the banks is a simple no.**

I wanted to touch on businesses sold in embedded swaps. If the advice from the FCA is comprehensive, I appeal to it to make it public. Those businesses are in limbo. They believe they have a right to be in the redress scheme and are told that legal advice is clear. I call on the FCA to make that advice available so that those businesses know what possibilities they have when trying to resolve their situation.

Interruption. The hon. Member for Wyre Forest (Mark Garnier) seems to want to intervene.

Mark Garnier: I am grateful for that prompted intervention. **My hon. Friend refers to legal advice given to the FCA, but it is clear that these are unregulated products and therefore the FCA is not addressing them. It could be argued that selling an unregulated product to a non-professional customer is a regulated activity and should be covered by regulated activity rules. There is a lot of confusion about that.**

Mr Marcus Jones (Nuneaton) (Con): I thank my hon. Friend the Member for Aberconwy (Guto Bebb) for the work and effort he has put into this issue not just on behalf of his constituents but on behalf of people who have been wronged by the banks up and down the country. He has done a fabulous job and we should all congratulate him on that.

I recall the initial debate in this Chamber on this important subject. I spoke about a business in my constituency that had been badly disadvantaged as a result of an interest-rate hedging product. The product in question was not just mis-sold by their bank; it was almost forced on my constituents by their bank. I was therefore extremely pleased when following that initial debate the FCA announced the redress scheme. The aims of the redress scheme suggested it would tick the boxes for my constituents—do the job and put my constituents back in the position they were in before the swap product was mis-sold to them.

It is important that we look at what the FCA scheme says in this regard. It states that the scheme provides for "fair and reasonable" redress, which **"means putting the customer back into the position they would have been in had the regulatory failings not occurred, including any consequential loss."**

Mr Mark Williams (Ceredigion) (LD): I would say it is a pleasure to speak in this debate, Madam Deputy Speaker, but I wonder whether it really is. We have had three of these debates so far and, sadly, they have been enriched by the experiences right across the country of our long-suffering constituents**. My contribution will be no different in bringing some of those experiences to the attention of the House, but I particularly wish to address the issue of fixed-rate loans—tailored business loans, as they are known in some quarters—how dangerous and toxic those products are, and how they remain excluded from the FCA review, an anomaly that should be addressed.**

….. I refer now to the commendable work of the Treasury Committee, which conducted a brief inquiry into this matter. **We heard evidence from Mr David Thorburn and Debbie Crosbie of the Clydesdale and Yorkshire Bank. The hon. Member for Dundee East (Stewart Hosie) raised the matter of the TBL sales process and asked Ms Crosbie: "If a customer is able to identify that that process did not happen, that that warning was not explicit, that would count as a mis-sell would it, in terms of your review?"**

Ms Crosbie replied in the affirmative. She said: "We believe that once you examine that process, and find that it had not been carried out in accordance with what we had agreed is appropriate, we would absolutely redress a customer and we have done so on a number of occasions."

Ms Crosbie also stated that "the customer gets a fixed payment for a fixed period of time and that payment will never change as long as the customer does not want to terminate the agreement early."

That is the mis-match between what we are told by managers, the experience of the Select Committee and the practice on the ground for Mr Beechey and his family.

Given the recent press coverage concerning the National Australia Bank, the parent bank, issuing a profit warning to Clydesdale and Yorkshire Bank and linking the bank to an imminent disposal, it is not surprising to learn that this bank drags its feet in addressing mis-selling issues with potentially dire consequences for some of our constituents. It serves its purpose to do so, often allowing the customers—my businesses in Ceredigion—to teeter on the brink in the hope that Her Majesty's Revenue and Customs will then move in and finish them off.

I very much concur with what my hon. Friend the Member for Aberconwy said about the changing attitude to HMRC as the debate on consequentials has moved on. Sadly, the reality here is that virtually all of Clydesdale and Yorkshire's lending was done via tailored business loans on fixed rates

and, as those products fall outside the scope of the FCA review, the bank has thus far avoided any effective redress scenario.

My hon. Friend the Member for Nuneaton (Mr Jones**) and others have talked about our despondency—and the despondency of our constituents—over the role of the FCA.** When the Financial Services Authority morphed into the FCA, we were assured that the new organisation would enforce rules and punish breaches and that it would focus on the behaviour of financial professionals. **In short, we were promised that it would be a true watchdog**. We have looked to the FCA to sort out this mess and to do so in a way that is both fair and timely, but that has not happened. As we have heard from other Members, the FCA has still not released comprehensive details of what constitutes a mis-sale. The agreement between the FCA and the major banks on which the review process is founded remains a secret agreement. Where is the transparency and fairness for these businesses that are so badly affected? Where is this protection for customers that is supposed to be at the heart of the FCA's work?

Mr Henry Bellingham (North West Norfolk) (Con): I have a business in my constituency that took out a fixed-rate tailored business loan, which had a hidden swap attached to it. The bank is trying to say that it is not regulated. Surely the key point is one of fairness and of putting all these people back in the position in which they would have been before.

Mr Williams: My hon. Friend is right. It is about fairness and the implications of these policies. Whether the policies were sold independently or hidden in a loan agreement, the implication has been the same. They were sold by the same people and so should be included in any future review.

The redress scheme has excluded a large number of people. Even before we drill down and thoroughly examine the scheme, it is hugely significant that a large number of businesses fall outside it. The scope of the scheme is too narrow and restrictive. It does not deal with the reality of what has gone on, which means that, as it stands, it will not change or reform bank behaviour or properly compensate people.

The scheme sets out that "the IRHP Review does not require customers to assess for themselves whether or not their sale was compliant."

If, as the FCA insists, there is no requirement for disclosure, how can it ever be possible to tell whether the banks, in reaching a judgment, are relying on erroneous information, or, as I have frequently come across, deliberately not taking information into account?

If the review process is to be transparent and fair, why is the customer not given a chance to view the evidence that the bank puts forward in the review and, if they feel it to be necessary, to have the opportunity to comment on it? How does the FCA fail to see that there will always be suspicion and mistrust when the process is shrouded in secrecy, and customers are deprived of the opportunity to view the evidence submitted by the bank to the bank's own review team?

Mark Garnier: The hon. Lady is absolutely right, and I shall return to that as I progress through my speech.

My first point is that there is little consistency between the banks in how they tackle the problems they have created. One of the FCA's frequently asked questions is: "Are the offers consistent between banks?"

Interestingly, its response reads: "The independent reviewers report regularly to the FCA, both on the judgements they are making and how the banks are performing, and will regularly bring all the independent reviewers together to ensure consistency of approach. The FCA also collects data on the offers being made by each bank and we carefully consider any variances to ensure that the standards are being applied consistently."

That in itself demonstrates that there is a huge amount of useful information that we are not getting a chance to see. It goes on: "We also regularly select individual case studies to follow up with banks".

The FCA is trying to be consistent, but cannot say that it is being consistent. We have heard on many occasions this afternoon about its not being consistent.

My example concerns not one of my constituents but someone else who came to see me and involves how the banks treat businesses that have gone into insolvency. Clearly, any insolvent business will have an insolvency practitioner winding up that business. It is a tragic time, but somebody has to come in and do it. In the event of an insolvency, the banks are involved both as a creditor, as they have lent money to the business in the first place, and as a debtor, as they owe redress and in many cases consequential losses to the business. Some banks behave quite well. HSBC is a reasonably good example and recognises that the insolvency practitioner is duty bound fairly to distribute the assets of an insolvent business to a wide range of creditors. To that end, HSBC will pay what is owed under the redress and consequential loss scheme into the insolvency practitioner's funds and then put in a bid for what it is owed from the original bank loan. The insolvency practitioner therefore makes a correct and fair assessment of who is owed what, and in some cases HSBC will get back not just less than it lent but less than it would have got back had it done what RBS does.

RBS is a frequent flyer in this debate, so I shall have a go at it, too. I am told that RBS will offset what it owes by way of redress and consequential loss against what it is owed by way of repayment of the loan. Therefore, although it is still owed money by the bankrupt business, it is owed less than it otherwise would have been, and when RBS seeks to limit its losses at the expense of other creditors' owed money, those creditors will lose money as a result of RBS's mis-selling. That is just plain wrong.

It is also wrong that some loans have been left outside the redress scheme. Those who took on tailored business loans, otherwise known as hidden or embedded swaps, have had exactly the same financial problem but for a technical reason are outside the regulated arena. Under article 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, due to some pretty technical reasoning, if a loan looks like a duck, swims like a duck and quacks, it is in fact a donkey. Some pretty smart lawyers have looked at that and the inescapable fact is that the legislation was written in a way that allowed many businesses to be mis-sold swaps in an area that is unregulated.

The FCA's frequently asked questions talk about these so-called commercial loans, stating: "Commercial loans generally fall outside the regulatory remit of the FCA and we therefore cannot direct the banks to set up a review of these products". That might possibly be so, but is not the act of an FCA member's selling any product to an unsophisticated customer a regulated activity that therefore falls under the FCA's remit?

Mr Bellingham: I agree entirely with my hon. Friend. Many of these businesses are not large concerns—some are SMEs and some are micro-businesses—and one could not describe some of the proprietors as highly sophisticated business people. As far as they were concerned, they were mis-sold these fixed-rate tailored business loans with the hidden swaps attached to them. Some have

been dealt with very quickly by the banks, but others have not and the banks have just ignored them completely.

Mark Garnier: My hon. Friend makes an incredibly important point. The point of the regulator, the FCA, is to protect unsophisticated consumers, but it has manifestly let down the consumers who subscribed.

The paragraph in the FCA briefing note continues: "The FCA has received legal advice supporting this view"—about article 85. It goes on to say that the Treasury Committee has carried out scrutiny of that advice. I am a member of the Treasury Committee and I think it is worth putting on the record just what that constitutes.

The Treasury Committee asked the regulator on many occasions for sight of the legal advice on these embedded swaps and on many occasions it said no. We asked whether we could send our legal advisers around to have a look at the advice on our behalf, but it continued to say no. We had a public evidence session with the chief executive officer and chairman recently and questioned them about the issue again. The answer they gave was that they were not prepared to let us see the advice as it was confidential. We pressed them on whether we could send our legal team to have a look at it and they answered that they needed space from Parliament to conduct their activities.

The regulator is answerable to Parliament. Although I am sympathetic to the submission that the regulator cannot have every confidential document shown to all hon. Members, who may well then tell the press, the CEO and chairman simply cannot say that they need to be excused one of their most fundamental duties—that of answering to us here in this place. In the end, we pressured them to relent and our legal adviser looked at the advice they had been given, and in fact they were right. But this is a sorry story of the regulator not understanding its duties and its constitutional place as answerable to Parliament.

In any sort of resolution scheme, it is inevitable that some people will feel well treated and others hard done by. One of my constituents was entitled to redress but felt that he did not need it, because he had bought exactly the product that he wanted and expected and he thinks it unfair on other people that he should seek redress when he took what he thinks was a fair deal. But he is unusual. I have constituents who have been completely and totally rolled over by the banks. Consequential loss offers are derisory for businesses that have taken a lifetime to establish and just a few telephone calls by mis-incentivised relationship managers to destroy. There are no consequential loss payments for reputations destroyed, or for goodwill wasted and track records smashed.

I was a member of the Parliamentary Commission on Banking Standards. We looked hard at how the regulator could drive better standards in the banking industry. There should be incentives for better behaviour, and banks are working on making their staff perform to higher ethical standards, but for every carrot there must be some sort of stick. If it is possible for banks to be fined for fixing LIBOR and forex benchmarks and for mis-selling insurance products, why have those banks who have destroyed so many businesses been allowed to choose their own form of redress with no further financial penalty?

I am baffled why the regulator has set up a redress scheme that is voluntary, has just one opportunity for appeal and is not being reviewed or assessed. Surely, it is right that people who are unsatisfied can have an independent appeal assessed by the Financial Ombudsman Service. A special unit could easily be set up at the FOS, funded by the banks, to give one last chance of appeal to those small businesses that fall outside the FOS's remit but inside the redress scheme. I

am also baffled why the regulator will not publish the terms of reference and the agreements between the regulator and the banks on how the scheme is managed and run and what is expected of it all. That lack of transparency can only lead to mistrust in the system and the regulator. I am also concerned that the regulator is so reluctant to share with agents of the Treasury Committee legal advice on whether embedded swaps are regulated.

With so many people left destitute and impoverished by what has happened, it is wrong that no one has been brought to account over this. Until such time as fines are levied and front-line staff guilty of mis-selling brought to book, confidence in the banking sector and the regulator will struggle to improve and standards may languish at an unacceptable level.

The last sentence of the motion before us calls respectfully for the Government to consider a review of this whole process and the conduct of the regulator. I urge my hon. Friend the Economic Secretary to the Treasury to look carefully at whether to hold an independent review of this whole regrettable scheme.

… EST Andrea Leadsom: I cannot comment on individual cases in the Chamber, but if there has been wrongdoing, the Government absolutely do not condone it, and the redress scheme is designed to provide compensation and fairness. We are determined that it will do that.

Paul Farrelly: Progress is undoubtedly being made, but that does not mean that lessons should not be learned. The hon. Member for Shrewsbury and Atcham (Daniel Kawczynski) rightly asked the Minister whether she would look at each of the cases named in the House. I urge her to do so. In addition, she should review the scheme and the way in which it was set up, leaving small businesses such as DK Motorcycles with no right of appeal. Will she commit to giving such businesses some hope of effective redress in the future?

Andrea Leadsom: I will certainly write to the FCA about all the cases raised in the Chamber today—and I will expect a reply.

Mr Bellingham: The key point is that some of the commercial loans—fixed-rate tailored business loans with hidden swaps—are not taken seriously by some banks. Indeed, some people in the FCA are saying that those loans are not regulated, so it would be very helpful if she looked at that point with the FCA.

Andrea Leadsom: Tailored business swaps were provided by largely Yorkshire and Clydesdale bank, which has voluntarily agreed to look at redress in a similar way to that in which the interest rate swap redress scheme works……..

March 2015 # Treasury - Eleventh Report

Conduct and competition in SME lending

https://publications.parliament.uk/pa/cm201415/cmselect/cmtreasy/204/20402.htm

CLYDESDALE'S REVIEW OF TBLS

152. Clydesdale has taken some action to address allegations that it mis-sold TBLs. Mr Thorburn told the Committee that in 2012, Clydesdale made adjustments to the TBL products they sold due to "difficulties surrounding their sale", noting that the type of product Clydesdale now sold was a "straightforward fixed-rate loan."[276] He said:

> […] we further simplified the products so we still offer a fixed-rate business loan, a simpler fixed-rate business loan, to our customers today but the more complex ones—the category A and B products, as the FCA describes them—have been off sale since this situation arose.[277]

153. As well as its FCA-mandated review of standalone IRHPs, Clydesdale has also been voluntarily reviewing past sales of some TBL products. However, not all TBL products are eligible to be part of Clydesdale's voluntary review. TBLs where "the interest rate was fixed for the period of the loan or any part of it", are excluded.[278] Mr Thorburn said:

> What we excluded from it were variable-rate tailored business loans and fixed-rate tailored business loans that do not have the same characteristics as the more complex interest-rate hedging products […].[279]

In written evidence, Clydesdale said that its voluntary TBL review did not apply to 8,372 fixed rate loans—81 per cent of its TBL portfolio.[280]

154. Clydesdale have justified the exclusion of fixed-rate TBLs from their review of TBLs on the basis that they are not equivalent in complexity to standalone fixed-rate IRHPs. Ms Crosbie of Clydesdale Bank told the Committee:

> The FCA standalone review detailed a set of products and they refer to them as category A, B and C. We accepted that a number of our tailored business loans had very similar characteristics, in that they would also be categorised as A, B and C. Where we found that to be the case we have opted all of those products in […] Any products that have been excluded from that review are fixed-rate products and we believe they are different, simpler to understand because the customer gets a fixed payment for a fixed period of time and that payment will never change as long as the customer does not want to terminate the agreement early.[281]

155. Standalone interest rate hedging products which exchange or "swap" two interest rate payments are used to fix the interest rate that a customer pays.[282] Such products are included in the in the FCA review as Category B.[283] Fixed rate TBLs also fix the interest rate that a customer pays. Functionally, these two products are therefore very similar. Furthermore, the Financial Ombudsman Service has been determining TBL cases in a similar way to standalone IRHP cases. Tony Boorman, then Interim Chief Executive and Chief Ombudsman of the Financial Ombudsman Service, said:

> The analysis that my ombudsmen have done suggests that our outcomes for the tailored business loans will be very similar to the analysis that we are undertaking in relation to the swaps cases.[284]

156. Clydesdale states that its own review uses "the same internal and external governance for the review of its in-scope Tailored Business Loans, including the same Independent Reviewer (Berwin Leighton Paisner), as it has used for the formal FCA review of stand-alone IRHPs".[285] However, aside from information submitted by Clydesdale to this Committee in in June 2014, and Clydesdale's publication *Information relating to Clydesdale and Yorkshire Banks' Review of Interest Rate Hedging Products (IRHPs)*, dated 9 April 2013, publicly available information on the operation and progress of Clydesdale's voluntary review remains limited.[286] For example, Clydesdale has not published statistics on the progress of its review.

157. Customers with Fixed Rate Loans—which are all outside Clydesdale Bank's voluntary TBL review—can complain to the bank directly through its normal complaints process. Ms Crosbie told the Committee that Clydesdale had sold "just over 8,300" fixed-rate TBLs and by June 2014 had "received 550 complaints about the sales process".[287]

158. Ms Crosbie told the Committee that offers following reviews of past complaints are "informed by any adjudications [Clydesdale] have had from FOS".[288] She said that, of these complaints, Clydesdale project that somewhere "in the order of 60%" of customers will receive "some form of redress". The main reason for redress were problems "around break cost".[289] When comparing findings of the FCA review of sales of standalone IRHPs to the sale of TBLs, Ms Crosbie said she did not see "the lack of understanding through the sales process that was evident in standalone review […] mirrored" in the sale of TBLs.[290]

159. In the absence of an FCA review of Tailored Business Loan sales, Clydesdale has created its own review to assess potential mis-selling of such products. It has employed the same independent reviewer as for its FCA review of IRHPs.[291]

160. However, Clydesdale's review excluded fixed rate products.[292] This represents 80 per cent of all TBL sales.[293] Customers with fixed rate products can complain to the bank through its usual internal complaints process.[294] Clydesdale told us that this exclusion was on the grounds that there was no equivalent product within the FCA review.[295]

161. The lack of public oversight, minimal transparency and limited coverage of the scheme mean that the Committee cannot be confident that Clydesdale's separate internal review will deliver outcomes equivalent to the FCA review upon which it is intended to be based. If Clydesdale's aim is to build public trust in its actions, it should address all three of these problems.

Challenging banks through the courts

CHALLENGING BANKS THROUGH THE COURTS

162. SMEs which are not covered by the FOS can challenge decisions by their banks through the courts. Bully Banks wrote: "the regulation of the banks in a free market economy is traditionally left to the courts and on many occasions the SME is advised to look to the courts for a remedy if they have a complaint which the bank refuses to recognize".[296]

163. However, many who wrote to the Committee complained that the cost of taking a bank to court would often be prohibitive. Bully Banks wrote:

> The banks conduct litigation with a strategic aim of increasing the costs of litigation as a deterrent to the customer to take or pursue legal proceedings. The costs of proceedings are huge. Just one current example will suffice to illustrate the point: one of our members with an IRHP to the value of £3.5 million is litigating against a bank for what appears to be an obvious mis-sale where the costs of both parties are currently estimated to be of the order of £700K. This level of costs is beyond the reach of the vast majority of SMEs […][297]

Minotaur, a claims management company, gave examples to the Committee that "highlight the plight of directors/owners who having appealed to the authorities available to them, realise their only real option for redress is court action that they are unable to finance".[298] Leander Joseph Difford, a care home owner, wrote to the Committee about his legal case against Clydesdale:

> We had already paid out approximately £40,000 in legal fees. On the 29th January our lawyers asked for another £10,000 to appear in court the next day. We could not afford it and later that day we decided as a family that we could no longer fight […][299]

164. Bully Banks also noted that the continuing relationship between an SME and its bank made legal action difficult, saying that "the practical reality is that, given the dependence of the SME on its bank, it is an incredibly difficult decision for an SME to decide to sue its bank.[300]

Responses to Reports

- Conduct and Competition in SME Lending (PDF) *Published 18 December 2015*

Correspondence from HM Treasury in respect of Conduct and Competition in SME Lending

Correspondence

- Letter from Martin Wheatley, dated 9 March 2015 (PDF) *Published 10 March 2015*

Martin Wheatley writes to Mr Andrew Tyrie MP on Interest Rate Hedging Products

FCA Response

https://www.parliament.uk/documents/commons-committees/treasury/Responses/Financial-Conduct-Authority-response-to-Conduct-and-Competition-in-SME.pdf

4 December 2014 Andrea Leadsom: Tailored business swaps were provided by largely Yorkshire and Clydesdale bank, which has voluntarily agreed to look at redress in a similar way to that in which the interest rate swap redress scheme works……..

Bully-Banks

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Mrs Andrea Leadsom
House of Commons
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SW1A 0AA

20th March 2015

Dear Mrs Leadsom

I am writing to you on behalf of those members of Ordinary People in Business who have entered into Fixed Rate Loans with mark-to-market break costs ('Fixed Rate Loans').

As you know, the Treasury Select Committee (TSC) published its report into SME lending on 10th March ('the Report'). It was damning of the Clydesdale Bank's behaviour, suggesting that it had mis-sold Tailored Business Loans (TBLs) and it exposed a catalogue of misconduct relating to their sale.

The Report also confirmed what has been known about Fixed Rate Loans for some time, ie. that they are effectively the same as vanilla swaps. It quoted the FCA, 'TBLs have a very similar economic

impact to an IRHP coupled with a variable rate loan.' This is demonstrated in the attached 'Hidden Swaps Illustration' document prepared by Nick Stoop of Warwick Rick Management.

It also confirmed that the Clydesdale deliberately designed the product to avoid regulation, 'It created TBLs to avoid requirements imposed by the regulator on the sale of a regulated product, IRHPs' and 'Clydesdale created a product that retained the risks and complexities of the regulated product, but had none of the safeguards.'

It also showed that the sale of TBLs was highly commission-led. A former employee revealed that the bank had a culture in which there was a 'pressure to sell at all costs that was driven from the top of the organisation' and 'staff who did not meet targets faced disciplinary action'.

As a Clydesdale customer who has seven fixed-rate TBLs in the family, I was delighted to see that bank singled out for criticism for mis-selling Fixed Rate Loans. However, I have to point out that the Clydesdale is only responsible for selling about 12% of the total. All banks and building societies did it.

Martin Wheatley said there were 'about 60,000' sold but this is an underestimate because he only included the top 5 banks and no building societies. He also only included sales since December 2001 – an erroneous date because it refers to the start date of FSA regulation which does not apply to unregulated products. The number is therefore well over 70,000.

Bully-Banks' survey on Fixed Rate Loans sales has shown almost identical patterns of mis-selling to that which was found with standalone swaps. From our survey data, over 95% of Fixed Rate Loans also appear to have been mis-sold. In the last IRHP mis-selling debate you said of swap mis-selling that customers 'lacked the necessary skills and knowledge to fully understand the risks of these products' and that businesses 'should receive appropriate redress'. This is no different for Fixed Rate Loans.

Fundamentally, swaps are inappropriate and potentially very dangerous products for SMEs. The attached concise document by Nick Stoop explains this. Anyone who understands derivatives and also understands SMEs knows this but the core fact needs to be recognised by Government. The heart of the problem is the parroting by the FCA of the bank's self-serving view that complex derivatives are somehow appropriate for SMEs. It is a tired and discredited line.

Sir Edward Garnier QC MP – the former Solicitor General for England and Wales - expressed the issues very clearly in the debate. Sir Edward dismissed as absurd the notion that the businessman he referred to would knowingly expose his wife and his company to 'a product that would place them in such dire jeopardy'. He went on to say 'it is high time that the FCA… stopped pulling its punches with the salespeople… in order to ensure that honest dealing is what we get from our bank.' I could not agree more.

The FCA Review has shown that IRHPs were widely mis-sold – and these were to SMEs who knew they were buying a swap. Fixed Rate Loans contain swaps but the customers didn't even know that when they took them out, and most still don't! I have also attached a redacted 'Swap Report' on a Fixed Rate Loan sold in 2007 which shows beyond doubt the true nature and consequences of these products. Table 6 is particularly telling.

I am in contact with Guto Bebb and a number of TSC members and I know they are very sympathetic to the problem and have tried to find a way forward. It was also comforting to see the number of MPs who raised the issue in the last debate and I was pleased how much time was devoted to the discussion.

You will no doubt be aware that the TSC's QC agreed with the FCA that the products did not fall under Article 85 of FSMA (RAO) 2001 rendering them unregulated, which means that the banks are currently immune to the possibility of a systematic FCA review of Fixed Rate Loan mis-selling. We at Bully-Banks found the legal opinion weak and do not agree with this interpretation of the statute. We are seeking our own expert QC opinion but this will take time and in the meantime customers who have experienced Fixed-Rate Loan mis-selling are at sea.

To expect 70,000 people to complain to their bank is not realistic or fair. Here are the reasons why:

1. Many people are completely unaware they have a ticking time-bomb of massive break fees which will go off whenever they need to amend their lending.
2. They don't know that there is a swap embedded in their Fixed Rate Loan.
3. They don't realise that all the sales practices which applied to swaps mis-selling also applied to Fixed Rate Loan mis-selling, ie.
    - their bank abused the inequity of knowledge between the parties to sell them interest rate protection they didn't need
    - hedging by fixing is not a legitimate condition of lending
    - they could have bought a cap instead which would have offered them cheap but adequate interest rate protection if they had wanted it
    - bank personnel made large bonuses for selling Fixed Rate Loans which drove the sale
    - the product is detrimental to their business as it affects their credit line
4. If they do realise what their product is they don't really understand it (because they are unsophisticated) so don't know how to argue their case properly.
5. People think they don't have cause for complaint because they asked for a Fixed Rate Loan because they 'wanted to know where they are' each month. They may have done but was normally on the reasonable assumption that it was just like a residential fixed-rate mortgage with a 1-3% break fee.
6. People whose loans have expired don't realise they can still complain.

There are also many personal reasons why people don't complain:

1. Small businesses have a fear of taking on their bank. You acknowledged this and the 'unequal resources' problem in the debate. People worry about upsetting their bank in case overdraft facilities are withdrawn or small-print covenants are enforced vindictively. It is a risk too big to take, especially when a personal guarantee over their family home is involved.
2. Many businesspeople don't have the self-belief to pursue a complaint because they still trust their bank and can't believe they would do them harm.
3. Many do not have the skills, energy or money to pursue a good quality complaint against a large and powerful organisation which will usually strenuously deny any wrongdoing and present customers with an officious brick wall.
4. People blame themselves for their predicament or just think they backed the wrong horse so don't have cause for complaint.
5. In many cases the Relationship Manager who sold them the loan is the same person they still deal with, which would create animosity if they were to complain.

6. Many are embarrassed or in denial about their situation and instead would rather just struggle on. Some have not even told their wives/husbands.
7. Many would not want to make it public knowledge that they are in dispute with their bank which implies they are in financial difficulty, because of the effect that may have on their reputation in their community or with suppliers or customers.

The FOS is not the answer for dealing with this problem either. The compensation limit of £150k sadly does not 'cover the vast majority of cases' as you stated in the debate. Indeed many businesses are excluded from the FOS anyway on the basis of their staff numbers so have nowhere to go. My personal opinion is that it is too much to expect the FOS to handle such complex and important decisions as they are not equipped to do so.

The legal route to redress is far beyond the means of most SMEs. In any case most sales will now be out of the 6-year time limitation.

Given the systematic misconduct by the Clydesdale highlighted by the TSC Report, and the fact that all banks and building societies sold identical products, it should be clear that this is another serious example of widespread customer abuse. There is no need for a pilot study - our survey contains the data.

SMEs are indeed as you said in the debate, the 'lifeblood of the economy'. You said that the finding that 91% of IRHPs were mis-sold was 'a totally shocking statistic' and you pledged that 'where there has been wrong-doing the Government does not condone it'. I therefore believe the Government needs to do much more to help them over Fixed Rate Loan mis-selling.

Even if the FSMA Article 85 argument about the regulatory status of Fixed Rate Loans reaches a stalemate, there is no doubt that banks and building societies are still guilty of widespread misconduct and systematic breaches of the Business Banking Code.

All businesses with Fixed Rate Loans should be contacted proactively by the banks and building societies as they were in the FCA IRHP Review. This must be done in a co-ordinated way to ensure that complaints are properly and consistently investigated. I have a long wish-list for a Fixed Rate Loans Review which I shared with Guto previously and I am happy to provide it if requested.

Someone has to oversee this. I see no reason why it cannot be the FCA; as part of the FCA 'voluntary review' of IRHPs over 2,000 complex TBLs sold by the Clydesdale were also reviewed. These products are not regulated but I believe the sales of these products were reviewed in the same way.

If the FCA continues to say it cannot get involved, then the Government needs to find a way of putting a new team in place to co-ordinate this as soon as possible. Considering the criticisms the FCA have received over the IRHP Review maybe this would be the best solution.

If you wish to meet to discuss these points I am happy to do so.

Yours sincerely

Dr Fiona Sherriff
Director, Ordinary People in Business Ltd

1 February 2016

Guto Bebb (Aberconwy) (Con) I beg to move,

That this House believes that the Financial Conduct Authority in its current form is not fit for purpose; and has no confidence in its existing structure and procedures.

It is four years since I first raised the issue of interest swap mis-selling in this Chamber. Since then, I have led three Back-Bench business debates on the issue; an Adjournment debate on the Connaught Income Fund, which is another example of financial mis-selling; and a debate on the global restructuring group. I have also contributed to an effort to secure a debate on the future of the Royal Bank of Scotland. It is clear that I have attempted to utilise this House to bring to the attention of Members and the wider public the issue of financial mismanagement and the lack of financial regulation in the marketplace.

Some people have argued that this debate and this motion are premature. Given the evidence and information that I will present, I argue that they are long overdue. We must remember that the Financial Conduct Authority has a clear and specific mission statement:

MP sitting in 2018	Party
Daniel Kawczynski	Conservative
John Mann	Labour
Jacob Rees-Mogg	Conservative

15 December 2016 Volume 618

George Kerevan (East Lothian) (SNP) I beg to move,

That this House notes the statement presented to **the Treasury Committee on 20 July 2016 by Dr Andrew Bailey of the Financial Conduct Authority (FCA); endorses his statement that the ad hoc creation of a compensation scheme within the FCA was not entirely successful and lacked perceived authority to treat customers with fair outcomes; believes that the recent headlines and allegations in the press against RBS will lead to pressure for a similar scheme; notes that many debates in this House over the years have focused on similar subjects with different lenders; believes that what is needed is not ad hoc compensation schemes, but a long-term, effective and timely dispute resolution mechanism for both regulated and unregulated financial contracts; and calls on the FCA, the Department for Business, Energy and Industrial Strategy and the Ministry of Justice to work with the All-Party Parliamentary Group on Fair Business Banking to create a sustainable platform for commercial financial dispute resolution.**

MP sitting in 2018	Party
Patrick Grady	SNP
Stephen Gethins	SNP
David Hanson	Labour
Anna Turley (N/R?)	Labour

Hannah Bardell	SNP

In a recent letter to TSC member Mr Stewart Hosie dated 2 October 2018 (ref 180807B) Mr Andrew Bailey , CEO of the FCA , advised in the final paragraph….

“On your request for an update on progress concerning Clydesdale Bank’s Tailored Business Loans, **the Bank has completed a voluntary review and redress exercise of the sale of circa 1,500 loans. The methodology for this exercise was reviewed by us**. The cohort of customers who remain in dispute with the Bank is diminishing and Clydesdale is keeping the FCA up-to-date with its progress.“