



# Bully-Banks

17 February 2015

Dear \_\_\_\_\_

## **Judicial Review: the FCA Redress Scheme**

Over the last few days MPs have made available to the press:

- copies of the agreements between the FSA and the banks (“the Agreements”) which set out the detail of the FCA Redress Scheme;
- and information (“the Information”) regarding the detailed workings of the Review Scheme.

The Agreements indicate that the FCA Redress Scheme was not as we and you had understood it to be.

It appears that the Agreements may have been inappropriately biased towards protecting the banks’ financial interests and not focused on fair and proper redress. It is also clear from the Information and the Agreements that some banks, with the knowledge of FCA, did not comply with the Agreements they signed. In particular it seems likely that the so called independent reviewers or skilled persons who were meant to have been engaged to oversee the workings of the Redress Scheme may have been effectively disengaged from a proper oversight role in many cases.

As a result of the above we believe that it is likely that many SMEs have received inadequate compensation under the FCA Redress Scheme or been denied compensation they should have had.

Bully-Banks has sought legal advice on the implications of the above and has been advised based on that there appear to be good prospects of bringing a successful legal challenge over what has taken place.

Bully-Banks has therefore instructed Slater & Gordon to take legal action forward on behalf of our many members who have been adversely affected. Ordinary People in Business Limited intends to participate in the action as an affected organization. It is clear we too may have been misled.

Slater & Gordon are looking at a number of options including action against the regulator FCA for breach of the European directive MIFID by failing to put in place an effective redress scheme and failing to properly supervise the banks in the operation of the

scheme. Our lawyers will also look at the position of the individual banks that seemingly failed to comply with the requirements of the Agreements.

The remedies sought by the claimants would be that the defendants make up the financial shortfalls the claimants experienced as a result of the inadequacies of the Redress Scheme OR as a result of the FCA's defective supervision of the operation of the Redress Scheme OR as a result of the failure of the banks to comply with the requirements of the Agreements.

Proceedings have to be brought within 3 months of these recent disclosures. The first step will be to serve a pre-action letter and this will happen within the next few weeks.

Slater Gordon has already spoken to legal counsel who have confirmed that in the light of the recent disclosures the contemplated legal actions may very well succeed.

However the cases will be dependent on evidence from SMEs showing:

- discrepancies between how the FCA explained the Scheme would work and the actual the terms of the Agreements;
- the variations between each of the banks' application of the redress principles set out in the Agreements;
- the failure of the banks to apply the redress principles set out in the Agreements; and
- the failure of the FCA to properly supervise the execution of the FCA Redress Scheme by the banks.

One area of focus will be "Swap for a Swap". We can now see that, if as was almost always the case, there was no unsolicited approach for rate protection by a customer, that insufficient information on the risks inherent in a Swap was given and that no "stepped premium information" on caps was given, then a "Swap for Swap" should not have been included within a redress offer.

Another area of focus is Consequential Loss. The principles set out in the Agreements have not been reflected in the banks' determinations of Consequential Loss. In addition the FCA has not accurately represented the provisions of the Agreements dealing with Consequential Loss in their statements to customers.

Slater & Gordon have instructed counsel to prepare the pre action letter.

Clearly this is a very important development for all of us within the FCA Redress Scheme who are dissatisfied with the redress offer received.

Bully-Banks can provide a good deal evidence regarding the statements made in subparagraphs 1 through 4 above.

What we now need to do is to prepare a comprehensive file evidencing the statements made in subparagraphs 1 through 4 above by examples of our members' experiences. This is Bully-Banks greatest weapon – the data its members can provide.

To this end we are asking you to email a statement to [info@bully-banks.co.uk](mailto:info@bully-banks.co.uk) summarising:

- why you believe the Redress Scheme has failed to provide fair and reasonable redress to you;
- any perceived failure of equitable process that you have experienced (e.g. the failure of the bank to disclose documentation, the failure of the bank to disclose the documentation provided to the Independent Person, the failure of the Independent Person to engage in any dialogue with you, the failure of the bank to explain the reasons for its decisions in writing, the failure of the bank to engage in a meaningful dialogue with you as part of their purported appeal process, the failure of the Independent Person to engage in a meaningful dialogue with you as part of the purported appeal process etc.); and
- any perceived failure of the bank to comply with the terms of the Agreements (e.g. the inclusion of a Swap for a Swap in the Redress Offer, the insistence upon acceptance of the 8% simple interest as a full satisfaction of your claim for Consequential Loss, the failure to properly involve the Independent Person in the processes of the Redress Scheme etc.).

If you have had professional advice in connection with your claim we would urge you to ask your professional advisor to help you prepare this email. (We are separately emailing those professional advisors of whom we are aware asking for their assistance in this matter.)

It would be helpful if you would attach to the email the statement that you submitted to your bank for the purposes of the Review summarizing the circumstances of the sale of the IRHP to you.

These emails and their attachments will be forwarded to Slater & Gordon and Counsel to assist in preparation of the proposed action.

May we urge you as strongly as we can to immediately provide the information we have requested. We have an opportunity to challenge the FCA Redress Scheme and we need every single member who is dissatisfied with their redress to now take that opportunity.

The information you provide will potentially benefit you but in addition it will potentially benefit every other party who believes that their redress under the FCA Redress Scheme is unsatisfactory.

**PLEASE PROVIDE THE INFORMATION WE ARE REQUESTING ASAP.**

We will be seeking further information from the membership in the form of a questionnaire that can be quickly analyzed for effective submission of data to the court.

We will keep you advised of our progress on this matter.

Kindest Regards,

Jeremy Roe  
Chairman  
Ordinary People in Business