

Banking & Finance

Friday, July 31st

Ruling raises hope of suing over mis-sold rate swaps



The landmark High Court ruling means victims may be able to sue their bank

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Published at 12:01AM, July 31 2015

Thousands of businesses angry at the outcome of the financial regulator's compensation scheme for victims of the mis-selling of interest rate swaps may be able to sue their bank after a landmark High Court ruling.

The decision raises the possibility that companies that think the Financial Conduct Authority's redress scheme failed to provide a reasonable level of compensation can argue that their bank failed in its duty of care to them, even if the mis-selling predates the six-year limit on legal challenges.

The case relates to a dispute between Suremime, a holiday park operator, and Barclays, which mis-sold the company an interest rate swap product in 2008.

The complex derivatives products were supposed to protect against any rise in interest rates. The FCA found that the punitive costs involved if interest rates fell and very high break costs involved in getting out of the products were not properly explained to tens of thousands of small and medium-sized companies. These businesses were often left nursing huge costs, and many failed as a result, when interest rates fell during the financial crisis.

The FCA's redress scheme has led to almost £2 billion being paid to more than 12,000 companies since 2012, but it has been the subject of fierce criticism from affected companies, MPs and campaigners who argue that it has left many victims with an unfair outcome.

The Treasury select committee has warned that it is far from clear whether the scheme has delivered fair and reasonable redress to those affected.

Judge Havelock-Allan accepted an argument from Suremime that the issue of whether a duty of care to customers arose from the FCA scheme should be settled at trial. Barclays argued that its duty of care lay only with the regulator, and not with the victims of mis-selling themselves.

The judge said the case was of public importance because many businesses that took part in the FCA scheme shared Suremime's anger at the outcome. Until yesterday's ruling, many companies feared that they had no prospect of seeking redress through the courts since taking part in the FCA scheme had rendered any potential legal claim out of time.

A Barclays spokesman said: "Barclays is committed to ensuring fair and reasonable outcomes in its review of interest rate swaps."