Backbench Business

Financial Conduct Authority Redress Scheme

1.17 pm

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.

We are coming to the end of the redress scheme, so it is appropriate that we examine its successes and failures at this point. I am, in general, an individual who sees the world in a "glass half full" rather than a "glass half empty" manner—some of my colleagues would perhaps dispute that—and I think it important to highlight some of the successes. First, 91% of all the sales examined within the scheme have been found to be non-compliant. That fact alone justifies all the effort that has been put in by Members from across the Chamber in ensuring that this issue was addressed by the banking system. Similarly, 99% of all redress determinations have been communicated to customers. A total of 14,000 redress offers have been made to date, 10,500 of which have been accepted. Some £1.5 billion in redress has been paid out. Some £1 billion—perhaps even £1.1 billion—of cancelled swaps have been hugely beneficial to the businesses that were affected. Most importantly, as a result of the successes that I mentioned, businesses and individual lives have been put back on track. We should, as a House, acknowledge those successes. However, when this Chamber called for the establishment of a redress scheme, we wanted a scheme that would be fair and equitable to all the businesses affected.

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

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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.

I want to highlight two other concerns. Tax treatment of redress payments is a real concern that can be dealt with by the Government and, as I have said, I will also touch on the exclusion of those businesses sold embedded swaps.

I will be quick, because I am aware that many hon. Members want to speak. I have a simple first example of the lack of consistency. When the scheme was established, it was decided that consequential losses and the redress would be paid in one instalment. Many businesses argued that that was unreasonable and unfair, and as a result of the second Backbench Business debate on this issue, nine of the 11 banks that are in the scheme agreed that they would split those payments. The FCA, however, despite saying that it wanted a consistent scheme, has allowed two banks to continue to insist on a single payment. That is a clear example of a lack of consistency.

The evidence I have gathered also shows that there is a lack of consistency on outcomes within

individual banks, which clearly raises a question about how the work of independent reviewers is being overseen. If they are coming up with conclusions and recommendations for redress that are significantly different for businesses with very similar problems, there is a question as to whether the work of those independent reviewers is being monitored properly.

Mr Marcus Jones (Nuneaton) (Con): My hon. Friend has been a stalwart campaigner on this issue and deserves great credit. On transparency, is there not a question about whether those reviewers, the review process and the reports they provide are truly independent? Constituents of mine who have been caught up in this have not received any of that information.

Guto Bebb: I am grateful to my hon. Friend for his intervention and agree with his rather depressing analysis, because my second point is that there is a concern about the significant lack of consistency on redress among the banks. We have to draw the attention of the House to the accusation published in *The Times* this morning that some banks have been putting pressure on their independent reviewers to make recommendations for redress that are acceptable to the banks rather than to the business in question. The allegation is made by a whistleblower who worked for KPMG on the independent review of RBS cases. It reflects anecdotal evidence from Bully-Banks, the campaigning organisation, that RBS customers have a 12% chance of getting a full tear-up, which is significantly less than the 65% at Barclays, 89% at Lloyds Banking Group and 64% at HSBC. If this is a consistent scheme, it is difficult to understand how the outcomes for individual businesses in one bank are so significantly different from those in other banks.

One of my concerns about transparency is that the FCA is not making available figures that highlight the outcomes on a bank-by-bank basis. It is simply giving us global figures. I accept that my concerns are based on anecdotal evidence, but it does seem to match evidence

from other sources, including that provided to me by an independent reviewer working for HSBC who claims that HSBC feels that RBS is taking advantage, and that from the whistleblower from KPMG who worked on the RBS redress scheme who claims that RBS is challenging any claim over £750,000. The evidence is stacking up that this is not a consistent scheme.

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.

Steve Rotheram (Liverpool, Walton) (Lab): I, too, congratulate the hon. Gentleman on bringing this issue to the House's attention. The only thing that is consistent and transparent is that the banks that caused the financial crash are profiting from selling products such as interest rate hedging products, which were bought by a company in my constituency, the Flanagan Group, and have caused it great difficulty. Does the hon. Gentleman think it is right that the banks should be profiting as a result of mis-selling products?

Guto Bebb: Of course not. The whole reason behind establishing the redress scheme is to try to deal with the wrongdoing of the banks. My concern is that the scheme has not succeeded as expected.

Paul Farrelly (Newcastle-under-Lyme) (Lab) *rose—*

Guto Bebb: I will take one final intervention; otherwise I will be told off by Mr Deputy Speaker.

Paul Farrelly: Does the hon. Gentleman agree that the level of provisioning in the banks suggests that there is inconsistency? For instance, in RBS there were 7,300 cases and £1.4 billion of

provisions, while in Barclays there were 2,900 cases and £1.5 billion of provisions.

Guto Bebb: The hon. Gentleman makes an important point. There have been concerns throughout the process about the level of provision within banks. In view of some of the information provided by the KPMG whistleblower, RBS's confidence in having a very low level of provision probably justifies its attitude to the review.

Another point about the lack of consistency relates again, unfortunately, to the behaviour of RBS. It has been argued that a good result for a business from the redress scheme is to have a full tear-up of the agreement or to implement a cap rather than a swap. Indeed, it has been argued that a cap would in many cases have been a much better original product. From the detail of many of the caps offered to RBS customers, it transpires that most of them are for 10 years. I do not claim to be an expert, but experts in the field of derivatives and interest rate protection tell me that there is no demand in the

marketplace for a 10-year cap. They have challenged RBS to give one example of a 10-year cap that it has sold commercially in the past 10 years, but as yet RBS has not come back with such an example. Yet, time and again when businesses are offered a cap as an alternative product, the cap is for 10 years. It will not surprise hon. Members to learn that a 10-year cap is significantly more expensive than a five-year one. That added cost comes out of the redress made available to the relevant businesses. There are therefore questions to be asked about the behaviour of some banks, including RBS, and those questions raise doubts about the consistency of the scheme.

On transparency, I am concerned that the agreement between the banks has not been disclosed. That means that it is very difficult to assess the success or otherwise of an outcome, because we do not know what to measure it against. The agreement has not been made available to the all-party group or the Treasury Committee, but I must ask why, because when the FCA says that it is robustly ensuring that the agreement is maintained, we cannot assess whether that is the case.

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

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the RCA 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?

Zac Goldsmith (Richmond Park) (Con): Eight or nine of my constituents have asked me to put on record their enormous gratitude to my hon. Friend for his extraordinary work in leading this campaign, and I am very pleased to do so. What arguments has he heard against his proposed appeal system so far, because it is very hard to imagine any deal-breaking arguments against such a logical solution?

Guto Bebb: I entirely agree. The argument has been that as the reviewers are independent the FCA can have full trust in them, but in view of the inequitable outcomes reported to us and the information provided by the whistleblower who used to work in the independent review team on RBS, there is clearly much merit in the appeal process that I have identified as a way forward. I cannot think of any arguments against such a simple way forward.

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.

Christopher Pincher (Tamworth) (Con): I congratulate my hon. Friend on securing this debate. Does he not agree that the loss to companies is much larger than simple consequential losses? We are talking about small

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firms, with just a few employees, who are grappling with the banks and the redress system. In my constituency, a three-man outfit has been grappling with Lloyds for nearly two years. Whenever they correspond with Lloyds it takes perhaps half a month to get through all the paperwork, which has a real impact on their ability to develop and build their business.

Guto Bebb: I agree. The scheme was described as one in which businesses would not need professional advice. Yet when a consequential loss claim is made, either by a business or by a business with the support of legal or professional advisers, banks time and again respond with the support of legal and accountancy firms. The process for consequential losses is therefore very unequal.

Martin Horwood (Cheltenham) (LD): Will the hon. Gentleman give way?

Guto Bebb: I will take one final intervention on this point; if I took any more I would be in trouble with Madam Deputy Speaker.

Martin Horwood: I am grateful to the hon. Gentleman for the campaign he has fought and for his support for the Bully-Banks campaign, which also deserves credit. One of my constituents, who thinks that his business has suffered hundreds of thousands of pounds of consequential losses, has told me that 90% of consequential loss claims have been rejected. Does the hon. Gentleman agree that that does not truly reflect the real situation?

Guto Bebb: I agree entirely, and that is why we need a review of the current redress scheme.

My final point, which the Government could respond to positively, concerns the decision by HMRC to tax redress received by businesses. HMRC has decided to treat any redress received as income generated in the year in question, which means that many small businesses will pay tax on that redress at their marginal tax rate. Has HMRC taken seriously the possibility of using extra statutory concession D33, paragraph 11, which states:

“A right of action may be acquired in a situation where it is not possible to identify a separate underlying asset. For example, where a professional adviser has given misleading advice on a tax or other financial matter, or in relation to private or domestic matters…Broadly, when we are looking at capital sums without an underlying asset which fall within paragraph 11 of ESC D33 we are looking at a financial loss, for example compensation for poor professional advice or for mis-selling of financial products.”?

In effect, that means that when the compensation is for bad financial advice or mis-selling a financial product, it should be treated not as income but as a gain for capital gains tax purposes, which would be a fairer resolution. Currently, banks are able to offset any redress paid for their tax purposes, although businesses end up paying tax on any redress they receive. It is unacceptable that the wrongdoers get tax relief while the wronged have to pay tax on their compensation, and I ask the Minister to consider that point.

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

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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.

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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.

Guto Bebb: I am grateful to my hon. Friend for that intervention.

It is fair and right to acknowledge that the redress scheme has been better than no action whatsoever, but concerns clearly remain. Action is required on consequential losses, and there is no justification for refusing an internal appeals process within the review process. The lack of transparency allows people to make assumptions about the behaviour of banks and the FCA, which is damaging to the financial system, and more transparency would give greater confidence in the way the scheme works. HMRC needs to address the issue of taxing redress paid to businesses with a degree of sympathy that has not so far been shown.

Crucially, allegations about the behaviour of some banks in the scheme should be a cause for concern not just to Members of the House but to those on the Government and Opposition Front Benches. The issue must be considered carefully, which is why the motion asks for consideration to be given to the establishment of a review of the current redress scheme. If the regulator is unable to regulate the scheme it has established and make right the wrongs committed by the banks, it is important for the Government to take responsibility.

Several hon. Members *rose—*

Madam Deputy Speaker (Mrs Eleanor Laing): Order. Several Members are trying to catch my eye and we have limited time available. I am therefore obliged to introduce a 10-minute time limit on Back-Bench speeches.

1.44 pm

Paul Farrelly (Newcastle-under-Lyme) (Lab): I want to talk about one of my local businesses, DK Motorcycles, which has been badly let down not only by its former bank, the Royal Bank of Scotland, but by the Financial Conduct Authority and the partial scheme of redress over the mis-selling of interest rate products. Having finally escaped the clutches of RBS, this is the first time that the firm has felt confident enough to allow me to talk about its experiences in public, and its general manager, Ewan MacDonald, is sitting in the Gallery today, alongside many people from small businesses who feel bullied by their banks and let down by regulators.

DK Motorcycles entered into a 10-year LIBOR swap with RBS in August 2008, but there was nothing voluntary about it. The swap was an express condition of refinancing, but as interest rates fell, it later became clear how the enforced sale had exposed DK, like many other businesses,

to a penal interest burden. By the time DK had extricated itself from RBS's clutches at the end of last year, it had shelled out in interest and penalty charges more than a third of the original loan of just over £2.4 million.

In May last year, I wrote to the chief executive of the FCA with concerns about the grounds on which DK had been excluded from the redress scheme. At that time, the company was in the hands of the now infamous global restructuring—for which read "destruction"—group at RBS and was staving off a scenario where RBS would put in one of its pet consultancies, which was, as so often, an insolvency firm, and for which DK would inevitably pay to watch the vultures feast.

On the redress scheme, my concerns were about the so-called sophistication tests and the limited lessons that the FCA had learned in findings from its pilot review. The redress scheme has excluded 10,500 of the 30,000 sales of so-called hedging products, on the grounds that such firms were sophisticated and therefore either knew or should have known what they were doing, or that they would have the wherewithal to go to court if the banks failed to deal properly with their complaints. None of that, sadly, applies to a business like DK Motorcycles.

Steve Baker (Wycombe) (Con): I congratulate my hon. Friend the Member for Aberconwy (Guto Bebb) on securing this debate. On the point raised by the hon. Member for Newcastle-under-Lyme

(Paul Farrelly), businesses in my constituency have still not had explained to them how the charges are calculated. Does he agree that that is another area where the banks have failed, because it is clear that they have sold a product that even now is not well understood?

Paul Farrelly: Indeed, not only have the banks failed but the regulators have failed to show their teeth. Indeed, in the recent judgment on Crestsign the courts have only added to the uncertainty, and it behoves the Government to try to clear that up.

DK Motorcycles runs the largest motorcycle showroom in the country, selling high-value items from a single premises. It is a partnership, owned by father and son Derek and Kevin Neesam—hence the DK. At the time of the refinancing in 2008, it had a bookkeeper but not a specialist finance director. Ewan, the general manager, joined later and now looks after finance, as well as running the showroom. By no stretch of imagination could DK be called "financially sophisticated" in a world of complex derivative products. However, by dint of employing up to 75 people—both full and part time—and having a business turnover of £20 million, it failed two of the FCA's tests. In response to the pilot, the FCA admittedly amended some of its tests, but no flexibility was applied to the turnover test. As I pointed out to the FCA, that caught different types of businesses indiscriminately and left businesses such as DK bracketed together with the likes of BP or BT as so-called sophisticated, and therefore with no help against predatory banks such as RBS.

There was a further iniquity in the redress scheme, as the campaigning group Bully-Banks has repeatedly pointed out, because under the scheme, banks have a get out. Notwithstanding the tests, if they can offer evidence that a business was financially sophisticated, it would be excluded from the review. However, there was no

reciprocal ability for businesses like DK—a father and son partnership that just happened to be successful and passionate about selling motorbikes—to offer evidence suggesting the contrary.

I did not get a reply directly from the chief executive of the FCA. Instead, at the end of June 2013, a reply came from Christina Sinclair, then acting director of retail banking in the supervision division. The reply did not tell us any more than we already knew, and it still stressed DK's ability to lodge a complaint with RBS directly. Ms Sinclair singularly missed the point made by DK and many other businesses that, given their experiences so far, they were frankly petrified of making a formal complaint for fear that the bank would pull the plug on the business. From what I have seen of RBS, they were right to be frightened.

In the interim, DK, like me and all hon. Members in the Chamber, had seen the Tomlinson report and all the stories about the global restructuring group into which DK had been shunted. At the end of last year, DK finally found alternative bankers who were willing to take a proper, unsullied credit decision, but as a parting shot, RBS, in the form of their so-called relationship manager, the inaptly named Vicky Smart of the global restructuring group, said it did not want any of DK's business any more and withdrew crucial direct debit support for DK's customer finance arm. Fortunately, DK managed to overcome that apparent act of spite and the new bank put alternatives in place. RBS has continued to deal with DK in that way, refusing any meetings about redress and insisting on communicating through lawyers.

Steve Rotheram: It will be cold comfort to DK that the sorry tale my hon. Friend outlines is almost a mirror image of what has happened to a business in my constituency. I am sure other hon. Members will extol the virtues of companies that have also fallen foul of RBS. As I suggested to the hon. Member for Aberconwy (Guto Bebb), does my hon. Friend think that it is a disgrace that the very banks that caused the financial crash benefit from selling sophisticated derivatives to organisations that did not fully appreciate what they were getting into?

Paul Farrelly: It is indeed a disgrace. RBS has form not only outside the House, but inside it. The

Chair of the Treasury Committee recently said that the bank had misled it. He said:

“If this is how RBS deals with a parliamentary committee, how much can customers and regulators rely on it to be straightforward with them?”

Jonathan Edwards (Carmarthen East and Dinefwr) (PC): The hon. Gentleman makes an important point on refinancing. One of the main difficulties that my constituents, Mr and Mrs Bartels, got into was that they were unable to refinance their mortgages as a result of the interest rate swap on their current mortgage, which led to the demise of their business. That is not addressed in the redress scheme.

Paul Farrelly: Given the cash flow difficulties of firms such as DK and penal interest rate payments, they have problems financing their work in progress and stock. DK had to retrench, through which jobs were lost.

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Fortunately, it is now back on its feet and successful again, but it is allowing me to share its experience because so many other businesses are afraid of sharing theirs, for different reasons.

By September last year, when the FCA replied to my follow-up letter, in which I reiterated those fears, Christina Sinclair had gone—she had joined a bank as a senior member of compliance, in the latest twist in the regulator merry-go-round. The reply was from her successor, Andrew Giles, who, I believe, is still the FCA’s acting director of retail banking and therefore responsible for the scheme. His response to what we might call the fear factor was as follows:

“If having submitted a complaint to RBS, DKM has evidence of the bank attempting to penalize the business, DKM should send it to us… We would consider this in the context of our wider work in this area and in particular in relations to our ongoing supervision of RBS. Unfortunately”—

here is the clincher—

“due to confidentiality restrictions, we would not be able to say how we have used the information provided.”

What a great backbone stiffener that is for a small businesses. It is as useful as a chocolate fire guard, as we say in the potteries. Yet again, the FCA, as a regulator, is letting down businesses such as DK.

Mr Giles also said that the review did not stop the likes of DK going through the courts. Having been let down by the regulators, and having been rebuffed after asking RBS directly for redress, that was the only option available. DK considered it again and again, but decided not to go through the courts. It is no longer an option, because the statute of limitations on this sorry saga started six years ago and has just run out. The reality was that DK faced a possible legal bill of £250,000 and possibly twice that if it lost to RBS. Like many small businesses, it simply could not afford the costs and risks of going to court.

I shall conclude with a few remarks on what DK and we would like to happen. One key thing is for the FCA to review its scheme for redress from banks. As a regulator, with Government backing, it should push through changes. DK wants to be able to appeal to an independent assessor against the finding that it was a sophisticated customer, just as banks were able to do under their get-out. When I pressed that with the FCA last year, Mr Giles said that, had that been allowed from the beginning, it would have slowed the process down and led to lots of small businesses not being compensated so quickly. We have seen great progress over the past year, so that argument holds no water today, and certainly not if the process completes in June 2015. It is not an argument against the regulator or the Government acting more effectively in pursuing the mis-selling of such damaging products.

As far as RBS and customers such as DK are concerned, the Government could cut through directly, because RBS was bailed out by the taxpayer after its folly and perfidy and is still owned by the taxpayer. All the major banks have been tainted by that scandal, but, as the FCA figures show, RBS

was by far the worst offender. Of the 15,400 sales at redress offer stage at the end of September, 7,300—nearly half—belonged to RBS. That is just the number of businesses who were admitted and not excluded from the scheme, not the size of their exposure.

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That suggests wholesale pumping of those toxic products down the RBS sales pipeline. The Government should address that as the majority owner of the bank. They should force the bank to have fully independent handling of complaints from customers such as DK that have been excluded from the scheme, in the interests of businesses, in the interests of a thorough clearing of the stables and in the interests of the future of RBS and therefore of the taxpayer when it is finally sold off.

My final thought is on consistency and the different attitudes of banks to the review. Given the scale of RBS's participation in the scandal, the Government should satisfy themselves, before RBS is sold off, that they are reserving the costs of its mis-selling in a way that reflects the reality of its involvement.

1.57 pm

Karen Lumley (Redditch) (Con): I thank my hon. Friend the Member for Aberconwy (Guto Bebb) for securing the debate and for his great work.

I want to highlight the situation of the Parsons family from my constituency. I met them in October 2010. They have suffered hugely having run into cash-flow difficulties following the start of interest rate swap payments. The Parsons believe that their bank, HSBC, has bypassed the terms of the FCA's review into the mis-selling of interest rate swaps to deny their business fair and reasonable consequential loss payments.

The Parsons are a very enterprising family who, as well as running their family business, have done so much great work in my local community, particularly in setting up a community benefit society. Elysia, the Parsons's family business, was founded in 1994. It is a general partnership between the three siblings, Sebastian, Tabitha and Sophie. It invests and operates businesses that are ethically driven, with a long-term aim to mutualise and invest profits in the community. Elysia has a number of business interests, including a biodynamic farm and a sustainable fair trade clothing company. Until December 2013, it was the sole UK distributor for Dr Hauschka skin care, having held the position for 19 years.

Elysia had a successful relationship with its bank for 15 years. It hesitated to sign up to interest rate swaps, but was persuaded to do so by the bank. Having met the family many times, it is no exaggeration to say that they feel they have been let down and were out of their depth.

HSBC has admitted mis-selling three interest rate swap hedging products to Elysia. The drop in the LIBOR rate led to a £350,000 loss. HSBC put the company into its loan management unit and took property sales to repay its loan. It forced interest rates up, costing Elysia hundreds of thousands of pounds more, and required the company to spend yet more thousands of pounds on advice from accountants. Elysia's cash starvation impacted on sales so much that stock ran low. In the end, it cost the family their business, because their supplier became tired of the bank being paid in preference.

The Parsons family believe that, throughout that time, HSBC was attempting to coerce them into selling their family firm. I know the family. The massive effect on their health is clear. One of them is unable to work. It is the feeling of the Parsons family that HSBC deprived Elysia of its working capital and remorselessly

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destroyed it. The family employed an accountant who estimated consequential losses of more than £7 million. Guess what HSBC offered them: £27,000.

The House will be aware of the FCA's promise to put customers back in the position they should have been in had the regulatory failings not occurred. In the case of my constituents, that has not happened. The inability to pay suppliers has led to a loss of a multimillion pound contract and some 40 UK jobs in my constituency. The Parsons are angry and frightened for the future of their family, as the business they set up to benefit the community is being attacked by bankers. It has been said many times that small business owners are the backbone of this country. We should not allow them to be treated this way. People have really suffered and are still suffering. They are calling out for a body with teeth to give them the redress they deserve. Unfortunately, I am not convinced that we have that with the FCA.

2.1 pm

Mr Russell Brown (Dumfries and Galloway) (Lab): I congratulate the hon. Member for Aberconwy (Guto Bebb) on what can be classed as nothing less than sheer determination in continuing the battle for justice for so many businesses the length and breadth of the country.

I would like to think that we could use the words fair and equitable today, but this issue is anything but. I suspect that by the end of my speech I will have come to a point where I support the hon. Gentleman and the all-party group. We have all witnessed a lack of consistency and a deplorable lack of transparency. We look down on a situation that far too many business people have experienced, bringing them to their knees. Many have been broken. The fact that there is no appeal process is, quite frankly, unbelievable. People have been put in a "take it or leave it" situation and their plight is just not acceptable in this day and age.

The hon. Gentleman referred to the 10-year cap. This is a product that no one wanted: it was not sold to people, but forced on them. The campaigning group Bully-Banks yesterday put out a press release that sums it all up. It said that more than 90% of sales reviewed by the banks had been mis-sold. There is no argument: the banks' conduct in selling these products was misconduct. Nothing could be clearer.

The first contact I had relating to this whole sad saga was about six years ago when a constituent came to see me. I have to admit that, not coming from a financial background, I had great difficulty in understanding what he was telling me. I have shared this experience with others in the House before. This was a guy who, along with his father, had worked for more than 20 years in the leisure park industry. Their bank, Barclays bank, had decided to set up a specific arm to offer products and loans to businesses for investment. After an approach from the bank, they decided to take out what turned out to be a hedge. After some time, they were then encouraged to change product. Some of the penalties involved with that product resulted in pressure to meet payments, and investment did not go into the business in the way they thought it would. They went from owning four leisure parks —one in my constituency and three in England —to selling them off one at a time, just to meet the bank's demands.

Eventually, my constituent came to see me to make me aware that he was now under real pressure. I asked him whether he needed me to contact the bank, but that was the last thing he wanted. He was afraid to contact the bank and make it aware of just what a desperate plight he was in, in case it closed in on him.

Guy Opperman: Does the hon. Gentleman agree that the reason the FCA redress scheme needs reform is that there is no alternative? Like the hon. Gentleman's constituents, my constituents who ran a bed and breakfast or a small and medium-sized enterprise could not go to the bank because of that fear. There is also an inability to go to law, because that would mean taking on a very large institution with deep pockets that they could not possibly hope to take on properly. The only way they can go forward is through the redress scheme, which has its deficiencies.

Mr Brown: I thank the hon. Gentleman for that intervention. As I continue this sorry tale, he will

see that the business went into litigation on this issue.

Steve Rotheram: We have heard the word fear on a number of occasions in this debate. Companies such as the Flanagan Group felt fearful of what the banks might do, but fearful, too, of the reputational damage that might have occurred from an external view of the company. Does my hon. Friend think that this is an appropriate way for banks to act?

Mr Brown: We all believe in the role that banks have in our day-to-day lives, whether as individuals, households or businesses. We need to think there is an element of trust. What we have discovered, however, is that there has been far too much mistrust. In addition, some senior people had no idea what their banks were doing. They allowed their managers to carry on selling products, while having no idea of their complexity. One person who worked for Barclays and sold some of these products came to meet me. He was in the Penrith area and decided to come and speak to me about my constituent. He told me that on being introduced to the products, which he was about to sell to customers, he asked his seniors, "What if this or that question is asked?" He was told just to move on, because there were no answers.

The long and short of this tale is that the banks eventually moved in with a team of administrators. I approached the administrators to tell them that I thought what was going on was wrong and that if my constituent went to court he would win his case. The administrators made out that they had to carry on with the business they had been pulled in to conduct, and they went ahead with it. My constituent owed the bank £1.2 million, of which £900,000 was bank charges—an absolute disgrace. As I said to the hon. Member for Hexham (Guy Opperman), my constituent went to court and he won the case. But that matters for nothing. Gone is more than 20 years of a family working together to build a business that was going reasonably well but went badly wrong when they were encouraged to take out products that they did not really understand, and which those selling the products did not really understand either.

I want briefly to mention another, more recent, case relating to another constituent in the far west of my constituency, down in Stranraer. This is a really tragic case. People and businesses do not just have problems with the banks. There are other issues lying in hiding too and some relate to Her Majesty's Revenue and Customs. This gentleman told me:

"For the last 6 years I have been a victim of the mis-selling of an IRHP SWAP Termed Business Loan."

The last three years, in particular, had been very difficult. He had been fighting off the bank that had been battling with him because it would not accept that it had mis-sold him a product. I could tell from the number of occasions I met him over the last three years that this was really getting him down. It got to the stage where he had to sell off his mother's family home of some 44 years. He had remortgaged his own home, incurred legal costs of over £8,000 and had put the family business of over 54 years standing in real jeopardy.

My constituent was eventually on the receiving end of a phone call from the bank to say that it was about to make him an offer within a two-month period, which it has now done. However, that offer of some £76,000 goes nowhere near to meeting the cost to him as a family man who had done nothing else but work morning, noon and night for such a sustained period of time that he missed his family growing up. The offer put him under real pressure. On the second last occasion he came to see me, he was seeking advice but knew in himself that he was being forced to "take it or leave it", as I mentioned before. The advice from the bank was that this was a "full and final" offer, with no recourse to consequential losses.

Had my constituent not got involved in this loan, he would have been building up his business, but it actually suffered. He wanted to develop the business and the properties he had available for rent. All that was put on hold, however, because he was struggling to meet the bank's regular demands.

My constituent has had to go to Revenue and Customs to strike a deal, agreeing that he would pay the bulk of the VAT he owed and that between now and the end of February everything would be cleared.

Guto Bebb: I hope I am not being greedy in intervening, but I think it should be placed on record that the "time to pay" arrangements of HMRC have been very positive on this issue, but the consequences of the redress scheme are not as positive as expected. The "time to pay" agreements have been taken away in many cases, so there is a need for the continued support of the banks while we try to resolve the situation.

Mr Brown: The hon. Gentleman is absolutely right. HMRC needs to be a little more patient with our constituents and with all of us here who are trying to do what is right in standing by our constituents and making the case for them. They have come through a traumatic time and they are not out of the woods yet, so they continue to need our help. That is why I wrote to HMRC on behalf of my constituent—to offer support, saying that I was quite confident and absolutely convinced that the issue would be resolved if it would just be patient.

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In conclusion, we need an appeal mechanism. Further consideration needs to be given to bringing those who were sold embedded swaps who seem to have been excluded, at least up until now, back into the system. If there is any means of acquiring someone or a small organisation that is independent of what is going on with the FCA in response to this issue, I would like to see it happen. It is right for people to get their just deserts; that is what justice means.

2.13 pm

Sir Edward Garnier (Harborough) (Con): I begin, as have others, in congratulating my hon. Friend the Member for Aberconwy (Guto Bebb) on initiating this debate. It is sad, as he said, that this is the second or third time he has had to bring this matter to our attention either on the Floor of the House or in Westminster Hall. He has plugged on, and my constituents and I are very grateful to him.

I have no doubt that all who contribute to the debate will mention constituency cases. It is right for us to do so. I had originally intended not to mention my constituents' names or the name of the bank with which they had to grapple because I thought it unfair, but since the hon. Member for Newcastle-under-Lyme (Paul Farrelly) and other hon. Members have already mentioned the bank and because I think the bank is big enough to look after itself, I shall not shrink from doing so.

My constituents, Bob and Stephanie Hamblin, are directors of a small property company called Hybeck Estates, which they founded in the early 1990s. Their companies had banked with RBS for many years since the 1980s, and they entered into first one and then a second lending arrangement. Sixty years ago, it might have been seen as somewhat unorthodox, but in the conditions that operated in the 1990s and the early part of this century, such arrangements have become increasingly usual, if not wholly orthodox.

All went well until about 2006, when the bank decided that the Hamblins and their company needed to restructure its existing hedging arrangements, and the bank recommended replacing the second loan arrangement with a swap, a collar or a knock-in collar on the basis that this would reduce the company's quarterly premium payments. On 16 February 2006, the bank sold the Hamblins a £3.5 million, 10-year amortising base rate collar.

In August 2012, the company submitted a complaint regarding the sale of the replacement collar in the context of the interest rate hedging product mis-selling review, and submitted further written evidence on 28 January this year. The complaint was essentially that the replacement collar was unsuitable for the company because of the risks involved—risks that were never adequately explained by the bank. The bank should have allowed the company to continue with the protection

of its earlier arrangements, which would have protected it against the possibility that interest rates would rise, without exposing it to the risks inherent in the new replacement collar.

On 1 July this year, the bank wrote a letter to the company, containing the bank's provisional offer of redress. It acknowledged that in the course of the sale of the replacement collar, the explanations it had provided to the company, initially in a crowded pub,

"in respect of the features, benefits or risks of alternative products did not comply with the standards agreed with the FCA."

The bank's failure to explain the

"features, benefits or risks of alternative products"

also extended to the appropriate alternative strategies, which were not explained at all. The company's desire for premium reduction could have been satisfied in a number of simple and risk-free ways—but they were not. The risks were simply not explained. The second cap—the earlier lending arrangement—exposed the company to no risks at all, but the new one exposed it to potential losses of more than £950,000 in the event of interest rates falling. That risk was not disclosed to the company; neither was the fact that, as a consequence of the liability incurred via this collar, the company's flexibility to refinance with another bank would be seriously impaired.

It seems reasonable to draw the inference—I am sure others would concur on the basis of their own constituency experiences—that the bank's poor sales practices were driven by the additional profit it could make by putting the company into this new vehicle. Derivatives pricing experts calculate that the expected net gain to the bank on the day of the transaction was over £43,000, and it incidentally cost the Hamblins and the company £0.33 million to extract themselves from it this year. The replacement collar, furthermore, is in serious breach of the 7.5% rule announced by the FCA at the outset of the review. This collar exposed the company to potential losses of very nearly £1 million—equivalent to 27% of the amount notionally hedged, which is almost four times higher than the stated 7.5% maximum.

Given these circumstances in which the bank has acknowledged that it neither explained the risks of the new collar, nor offered any of the simple premium-reducing strategies outlined above, the bank's conclusion that the company

"would have chosen a vanilla collar in any event"

is clearly absurd.

Here we have a company that has been in the property business for some little while, and a director of that company who knows something about—indeed, quite a lot about—the financial services industry, but is not an expert on hedging. To suggest that he would expose himself, his wife and his company to a product that would place them in such dire jeopardy is absurd. Nevertheless, the bank has concluded—through its internal review process, which has been validated by the FCA's independent review system—that they are not entitled to redress. The bank has made an admitted mistake and has caused admitted consequential loss, but it has said "You would have bought one of these anyway, so we will not pay you any compensation."

Guy Opperman: I am following the case of my hon. and learned Friend's constituent with interest, because it is very similar to cases that I have encountered in my constituency. If, like me, my hon. and learned Friend has met senior managers at RBS—the bank that is involved in both our constituents' cases—he will know that while they are very keen to resolve these cases, the middle managers who are dealing with the individual claims that are being assessed seem incapable of accepting the principle that they were at fault and are to blame. The Government ought to make it clear to senior management at RBS that they must ensure that there is true accountability in their own organisation.

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Sir Edward Garnier: I could not agree more. The banks and the FCA must take responsibility for what they have done, and if that requires the urging of the Treasury, please let that happen. These banks are making vast amounts of money, and although I am a Conservative capitalist and like companies to make profits, I expect them to behave properly.

Paul Farrelly: Do the hon. and learned Gentleman's constituents feel that they were advised by the bank to take on that collar? I ask because in the recent Crestsign case it was found that a company had been advised by RBS, but the bank was none the less allowed to rely on its disclaimer that it has not given advice. Does the he agree that that legal position only compounds the uncertainty and the risks posed to businesses that take the banks on?

Sir Edward Garnier: I will not comment on the legalities or illegalities involved in that specific case, but I will say in relation to the case to which I have referred that the bank not only failed to explain the risks of moving into a new loan vehicle fully, properly and candidly, but subsequently sought to hide its own responsibilities for its failures. Such action, besides being—in my view—immoral, lowers not just the trust and confidence that small businesses should have in the retail banking sector, but the collective confidence of Members of Parliament, who should hold the Government to account for those failures if they are such, and if they occurred on the Government's watch.

Ann McKechin (Glasgow North) (Lab): Another problem, which has been described to me by a constituent, is the fact that the documents with which the internal reviewer is provided by the bank are not necessarily made available to customers or their own advisers, unless a freedom of information or data request is submitted. The lack of transparency in the way in which the review is carried out, and the inability of customers to correct the information that is given to the reviewer, constitutes another failure in the system.

Sir Edward Garnier: I agree, and that reflects what happened in the case that I have described. If there is anything that ought to be done—and the motion deals with this—the transparency of the banks, and hence their accountability, should be increased. It is no good the independent reviewer saying "Nothing to see, do move on", because there is plenty to see. It is simply a question of being able to find it, expose it, and reach proper conclusions, either at law or as a matter of reasonable inference from what has gone on.

There is too much lack of candour, too much obfuscation, and too much dissembling. It is high time that the FCA lived up to its responsibilities; it is high time—I must say this to my hon. Friend the Economic Secretary, who has done a sterling job since entering the Government—that the Treasury leant on the FCA rather more heavily than it may have done in the past; and it is high time that the FCA, this new body, stopped pulling its punches with the salespeople, whether they are operating in pubs or in banking offices, in order to ensure that honest dealing is what we get from our banks.

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2.25 pm

Mark Reckless (Rochester and Strood) (UKIP): It is a privilege to follow the hon. and learned Member for Harborough (Sir Edward Garnier). He said that the Treasury should be leaning on the Financial Conduct Authority. I wonder where the Financial Conduct Authority itself should be leaning, because it has a considerable incentive to get this right.

We are talking about a precedent-setting voluntary redress scheme. In theory, if there is a class of customers who have not been treated fairly by the banks contrary to their regulatory principles, it would seem a good idea to establish a voluntary scheme to identify those who are in that class, the quantum of their loss, and the proper way in which to compensate them. If such cases can be dealt with in that way, rather than via the ombudsman or the courts, there is scope for significant cost

savings and also, potentially, for a fair and proper system. However, there appear to have been a number of operational problems.

Schemes such as this require a degree of timeliness. Members have referred to the six-month delay in the assessment of the scheme. The purpose of the delayed assessment was to ensure consistency, but it appears to have failed, certainly given the approach of one bank, RBS, which has already been mentioned by several Members. If there is to be a voluntary system, it needs to have the confidence of the banks which are voluntarily participating in it, as well as the confidence of customers. Unless there is consistency—if one bank is allowed to get away with not compensating in a number of areas in which other banks are compensating—neither this nor future schemes will have the confidence of users or providers.

There also needs to be transparency, in relation to the principles of the scheme and how it will operate, but also in relation to the information that is provided. One of the main problems is the fact that the scheme is operating a black box. The customers and their advisers who have the most knowledge of the circumstances involved are unable to make a judgment on whether it is in the customers' interests to enter the scheme in the first place, or on whether they are being dealt with properly within it. They are also unable to provide information that might correct misjudgments, because such information is not shared between the independent assessor, or the bank, and the end customer who is seeking compensation. May I ask the Economic Secretary why that information is not shared? Would this not be a better voluntary redress scheme, and a better model for other potential schemes, were it to be shared appropriately?

Consequential loss is a particularly important issue, which has arisen in a constituency case of mine. It seems that what was said about the operation of the scheme and the availability of consequential loss has not come to pass. At some point in the design of the scheme and in attempts to ensure its consistency, a decision seems to have been made—or, at least, a practice seems to have has developed—whereby virtually all consequential loss claims are turned down, or are paid to a vanishingly small degree.

According to information given to me by Berg, of the 1,535 cases that have been assessed for the purposes of consequential loss, 871 have received no consequential loss redress. Of those that have, 502 have received

between £1 and less than £10,000, 51 have received between £10,000 and £100,000, and just 11 have received more than £100,000. I understand that a further case has been settled between a charity and RBS, partly thanks to the intervention of a Member of Parliament yesterday.

It is very difficult to make a proper decision on whether to enter the scheme if information is not shared, and if statements made about consequential loss are not borne out. As many Members know, there is limited competition for small businesses in the banking market. However, what has become clear to me, as I have looked at this game in a particular case, is the extent to which businesses are locked in by the nature of the swap product, and then locked further by dispute or litigation relating to that product. While in some areas a business might be able to go to a different supplier, that is almost impossible to do in many circumstances where a swap has been sold and then a dispute has developed later as to that swap.

The business I seek to draw attention to today is Port Medway Marina Ltd in my constituency of Rochester and Strood, next to the village of Cuxton. David and Neil Taylor, a father and son team, have built up and developed that business, but have been held back in an extraordinary way by their bank and a dispute over a swap entered into. I do not want to speak negatively about that bank, which in this case is Barclays. I have had positive dealings with Barclays on constituency matters. I opened its impressive new branch on Chatham high street, and more generally it can be said that it is not like RBS or Lloyds HBOS. It did not get the taxpayer bail-out. There is a huge difference between having some temporary guarantees and taking tens of billions of pounds of taxpayers'

money. Barclays did not take that, and it deserves credit for that, and I look to it to be reasonable in its dealings with this set of constituents, as in other dealings I have had with it. It may be the redress scheme that is causing the problems, rather than the relationship there might otherwise be.

Roger Williams (Brecon and Radnorshire) (LD): The hon. Gentleman is being complimentary about Barclays, but as I understand it Barclays is one of two banks that will not pay out any redress unless the company involved also agrees to the consequential loss. That is rather unfair, particularly when those businesses are in urgent need of financial support.

Mark Reckless: I was not aware that Barclays was one of only two banks in that category. I am talking about a particular instance involving my constituents. They have an award, including interest, of £140,000, but they are only allowed to get that £140,000 if they give up their claim for consequential loss. As the hon. Gentleman says, that is unfair and I would encourage Barclays to look at that again, but also to look at the specifics of the case involving Port Medway Marina Ltd. I understand generally why banks will lean against consequential loss claims. They will be nervous that those consequential losses could expand unpredictably. It is also easy for a business to think, "If only we had had this money, we could have done that," and make assumptions that things would have gone well and have an optimistic view as to that opportunity. There are also cases where people take advantage, as we have seen

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with BP, particularly in respect of claims in the United States, but we could not be further from that situation here, and Barclays in particular has been able to revise down its provision, not least because it seems that it is paying very little, if anything, in the way of consequential loss claims.

The particulars of this business are unique. In 1990 David Taylor managed to find and purchase 30 acres of derelict riverfront boatyard adjoining Cuxton. He took quite some risk in doing that, and he has had to go through quite a lot of difficulties in planning arrangements and in getting the right permissions to develop his business, and now that of his son. At one point this company was employing 16 or 17 people, but there are now just seven people. Some £25,000 annually of interest has been taken out of what would otherwise be cash available to that firm—an amount that could service a loan upwards of £250,000. The absence of that capital, and the inability to go to another bank while this swap was in action and was being disputed, has prevented that business from growing in very serious ways. Usually there is a relatively competitive market in terms of opportunities, and if money is available we would expect other people to come in and, as it were, compete away the returns available. In this case, however, the 30 acres of prime riverside frontage to have dry docks, to store boats and to maintain and develop those boats is an extraordinary resource, because since 1990 the development of the property market particularly along the banks of the Thames has been such that there is no longer the previous great surplus of wharves and places to have dry docks and to look after boats in that way. Any money available to the owners of those sites to redevelop has largely gone on residential use of those river frontage areas, as huge amounts of money can often be made from residential development. That has meant that such sites have become almost unavailable along the Thames. To find a facility of comparable size to the 25 to 30 acres of available land that Port Medway Marina Ltd has in my constituency, we would have to go almost around East Anglia or all the way down to Southampton. The Taylors therefore have a huge business opportunity there, but it is being stopped, or very significantly hindered and slowed down, in its development by the mis-selling of this loan and the unavailability of finance, specifically in respect of a 65-tonne boat hoist that has been bought but which cannot be installed without a new dry dock, so the company only has a 25-tonne hoist. That difference is absolutely huge for a company of this sort, and it is the bankers who are responsible for the non-availability of the finance to develop that and the huge business opportunities that would otherwise have been available to this company.

I would like to see this company continue and thrive. With finance, I believe it can. Barclays has admitted, I believe—or it is not disputed—that this was mis-sold as a swap. The relationship

manager said it was a condition of the loan when it was not, and that manager has now left the company. I ask that bank to have a sensible look at this scheme and to allow this business in my constituency to grow and thrive in the way that it deserves to.

2.36 pm

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."

So the FCA had in fact set a very high test, which in principle was the right and proper thing to do. It was a test that, if properly applied, would surely lead to a fair outcome for my constituents and many people similarly affected. In practice the FCA scheme has worked up to a point, but it has not gone anywhere near satisfying its original aims.

I shall deal with the issue of simple damages, which, on the whole, I believe has worked well. Most of the banks have agreed to pay simple damages and deal with the issue of consequential loss separately. There are two exceptions, however. One of those two banks is my constituent's bank, Barclays, which has refused to do that. It has refused to deal with consequential loss separately. I will go into more detail in a moment about why that decision to link simple damages and consequential loss is so unfair, but first I would just like to touch on the mechanism that has been put in place for businesses to challenge the decisions of their banks regarding consequential loss. Again, I quote the relevant passage from the FCA scheme:

"All customers who receive a basic redress offer have the opportunity to make a claim for consequential loss…To facilitate this, banks are offering support for customers, for example, by providing guidance to help customers put their claims together.

Banks are also being pragmatic and customer-centric when customers ask for more time to put together their claims and will consider reasonable requests for extensions on a case by case basis… All claims are being assessed by independent reviewers. If claims are rejected, banks are providing constructive feedback so that…customers may be able to provide additional information to support their claims."

My constituents, taking the FCA at its word, contacted their bank, Barclays, for information to help them ascertain their consequential loss. This information took the form of requesting a schedule to show what additional loan repayments and charges they had paid by taking the swap rather than staying on their original product. Initially there were positive noises from the bank, but the information never materialised, despite repeated requests for it. My constituents then decided that the best way to deal with this would be to have their case independently reviewed, as per the

scheme. They were not told by Barclays that their case had already been reviewed, and to their dismay their review had been

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closed by Barclays. In essence, they were told by Barclays, “Take the simple redress, take the 8% or go to law.” I am not sure whether the review was independent—several right hon. and hon. Members have mentioned that issue. There was no report, no detail of who the review was carried out by and no detail of why my constituents were incorrect in their assertions. There was no transparency in this process whatsoever. I questioned this with the FCA, which did no more than back up the actions of Barclays—the whole arrangement between Barclays and the FCA seemed very cosy. At best I would say the FCA scheme was inadequate, but at worst I would say it was completely toothless.

This situation has, unfortunately, left my constituents having to pay the up-front cost to employ an expert to calculate consequential loss. They have also had no choice but to incur the up-front costs involved in considering whether litigation was economical or not. Now, 12 months from the initial offer made by Barclays, they are left with a choice: take on a David and Goliath fight with Barclays, without even the simple damages to help them facilitate it, or capitulate, taking the simple damages and the 8% for consequential loss and suffering the ongoing losses because they have not been put back into the position they were in originally. To a small business, such as the one I am talking about, that is Hobson’s choice: they have no choice whatsoever. Given what I have heard from right hon. and hon. colleagues, I am sure that this case is not unique; this is happening up and down the country, not just with Barclays, but with other banks.

Daniel Kawczynski (Shrewsbury and Atcham) (Con): I have two companies in my constituency that I am particularly concerned about, Regal Fayre and Bennett Holdings. I very much hope that my hon. Friend will agree that Members of Parliament have come to take part in this debate, so the Minister and her team should take a specific interest in each of the cases.

Mr Jones: I thank my hon. Friend for his invention, and I will address that issue in a moment. I know that my hon. Friend the Economic Secretary takes a considerable interest in this and I am sure she will take that interest further as a result of what she has heard today. People such as his constituents and mine need action. One way in which they could get the redress would be if these people were properly protected under the umbrella of the ombudsman. My constituents qualify for the criteria of the ombudsman scheme, but the maximum award of damages the ombudsman can offer is completely inadequate. I have spoken to the Minister on a number of occasions and at some length about that. Many people are going to the ombudsman and finding that it is recommending damages above and beyond what it can impose. I am aware that some banks are willing to honour that, but I am also aware that in many situations banks are not willing to honour what the ombudsman is saying. That brings us back to the point about inconsistency raised right at the start of this debate by my hon. Friend the Member for Aberconwy.

At the moment, I would probably give the FCA five out of 10—some people may think I am being generous—in achieving its aims under the scheme. If the FCA and the Government want to get 10 out of 10 in the eyes of my

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constituents, the FCA needs to have more teeth—if it does not have the power to deal with these issues. They need to make sure that a number of things happen. First, they need to make sure that all banks decouple the payment of simple damages from the matter of consequential loss. They also need to compel banks properly to assist their customers to assess their loss.

Guto Bebb: Although the FCA scheme says there is no need to get professional advice to help with the consequential loss claims, the evidence seems to suggest that the people who have taken on such advice have a better outcome than those who have not. Is that not another example of

inconsistencies?

Mr Jones: My hon. Friend is absolutely right about that. The issue of consequential loss is reasonably simple in some cases but extremely complex in others. Even in the most simple cases it is difficult for the people involved. We must not forget that they are “non-sophisticated customers” and it is difficult for them to assess their loss, so they should be helped in that.

Let me highlight a number of other things that must happen to make sure that people are satisfied that they have had a fair deal from this process. There needs to be far more transparency in the review process, for the reasons mentioned by right hon. and hon. Members. The banks need to be compelled to divulge the identity of the reviewer, and all the correspondence and other supporting documentation in relation to that review process. There also needs to be a review of the maximum level of compensation the FCA can award, to make sure that all small businesses are truly protected without having to go to law.

Finally, my hon. Friend raised an extremely important point about the tax treatment of people who get compensation. I know that the Government have already set a precedent in this regard; it may have been not for commercial loss suffered, but in relation to the Equitable Life scandal, which this Government have done their best to clear up. The payments made by my right hon. Friend the Chancellor to people affected by that scandal have not affected recipients’ tax positions. It is extremely important that we look carefully at this to make sure that the same applies in this regard.

This issue is about fairness; it is about fair redress for the loss that people have suffered. That redress can be fair only if the FCA scheme and the ombudsman can truly put people affected by this scandal back in the position they were in before they were mis-sold these awful interest rate hedging products.

2.47 pm

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.

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First, however, it would be remiss of me not to congratulate, again, my hon. Friend the Member for Aberconwy (Guto Bebb), the all-party group he founded and Bully-Banks. I shudder to think where we would be without him and those who were galvanised into founding Bully-Banks to push the agenda forward. It would churlish if I did not at the start of my contribution acknowledge, as my hon. Friend did, the record of the redress scheme in so far as it is a redress scheme, but today’s motion clearly spells out our sense of disappointment. More than that, it highlights our feelings about the inertia, helplessness and heartbreak expressed by many of the small business owners who have been mis-sold these products in the cases we are all dealing with.

I have spoken in this Chamber before about one business in my Ceredigion constituency, and I will do so again. I can see at least two or three former Aberystwyth students here who will know the business in question. The asset-rich farms, hotels and pubs in my constituency, which is dependent on agriculture and tourism, were very clearly targeted by the banks. There was a time when the trickle of cases that came into my surgeries reached torrent proportions. There were many, many cases of people coming to see me. Clearly, the policies had a direct impact on the employment base of my constituency, reliant as it is on seasonal trade. If there is the prospect of three or four large hotels closing down in a constituency, it is a very serious matter.

I have mentioned the case of Mr Mansel Beechey, the licensee of the Hen Llew Du Public House in Bridge street, Aberystwyth, and I want to continue to use his example. The fact that it is an unresolved case speaks volumes. He made a complaint to the bank about the mis-sale of his tailored business loan, an unregulated product, back in April 2012. It took Clydesdale and Yorkshire Bank well over six months to respond to that formal written complaint and, despite the efforts of my office facilitating meetings with some of its most senior personnel, the matter remains unresolved. Dither, delay and prevarication are the watchwords of its game. Its most recent excuse was that matters could not be progressed because of staff leave. That was at the beginning of September. Let us not forget that I am talking about an iconic and once successful business—one that had a future—being put in jeopardy. The fear is that the bank seeks to put this matter into the long grass.

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.”

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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."

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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?

We need to address the controversial matter of the offer of alternative products. As part of the redress, reviewers seem to be hellbent on suggesting that if my constituents had not taken out a particular type of hedging product, they would almost certainly have taken out something similar. Is it now really the case that providing customers with an alternative product as part of redress is actually a widely accepted or well-established principle?

Despite the brief and the impressive statistics, the FCA is still failing to address the issue of confidence; there remains a crisis of confidence in the banking industry. Many people, such as Mansel Beechey and my constituent in a related matter, David Grant of Llechryd, have deep misgivings about the industry, and this is not just a matter of justice; in communities such as mine, the small businesses that the Chancellor, the Deputy Prime Minister and the Prime Minister have said are so important to our economic recovery need action and assistance. If we do not act, we will fail many of our constituents, and it will be to the detriment of us all in terms of both justice and the economy.

2.59 pm

Bob Stewart (Beckenham) (Con): It is a pleasure to follow my hon. Friend the Member for Ceredigion (Mr Williams), who also attended Aberystwyth university. Like him, I commend my hon. Friend the Member for Aberconwy (Guto Bebb) for securing this debate and campaigning on this matter. I think that everyone in the House is grateful to him for his efforts.

Many small businesses have suffered as a result of bank mismanagement, and I wish to highlight just one of them. A constituent of mine, Mr Dean D'Eye, became a customer of the Romford lending division of NatWest—part of RBS, of course—14 years ago. He had investment and property development businesses, and his main contact point with NatWest was a man called Ray

Pask. Until 2008, Dean D'Eye carried out many transactions via NatWest. His total lending across various companies totalled about £11 million, with a debt of about £5.8 million. All interest payments on his debts were paid on time, and his business had a very satisfactory gearing of less than 60%.

After the Lehman bank collapse in September 2008, however, Dean D'Eye was inundated with additional requests for information, which took up a great deal of time—time off the crucial task of doing business. Then in December 2008, without warning, NatWest retained the £139,000 profit from a property sale, despite having

sent letters confirming it could be used to aid the group's cash flow. Thereafter, NatWest mis-sold the swap products associated with Dean D'Eye's business.

In early 2009, while the demands for even more information continued, Dean D'Eye's group was placed under watch by the global restructuring group. Then in April 2009, the bank sent in administrators from a company called MCR to report on his business. In Dean D'Eye's view, its subsequent report was engineered to cause maximum damage, to justify putting his business into administration.

Sir Andrew Stunell (Hazel Grove) (LD): I do not know the details of my hon. Friend's case, but I could almost recite them, given the grave similarities to cases that have arisen in my constituency. There seems to be a pattern, particularly with RBS, of following a track designed to produce a certain outcome, regardless of the strength of the business. Does he agree that the FCA should take that into account when looking at the independent assessments?

Bob Stewart: The point of our producing case studies is to prove that they are all along the same, incorrect path.

On 28 May 2009, NatWest formally cancelled Dean D'Eye's overdraft, which, considering the size of the business, was small—about £40,000. Within a week, on 1 June, all his loans were called in, so that by 10.17 am on 5 June, administrators had full control of the business, which they started running from his office. This decision meant the group lost its cash flow, which in turn created a default with Dunbar bank, owned by Zurich Insurance Group. Dunbar bank has a reputation for being even more ruthless with its customers than NatWest.

As was broadcast on a recent BBC "Panorama" programme, Lawrence Tomlinson, the Government's entrepreneur in residence, has exposed the dubious activities of NatWest's GRG department—on that matter, retribution was taken against him as well. The NatWest GRG's senior managers have at the very least given some obscure answers to the Treasury Committee. I understand that, since then, some of them have resigned and that the GRG has been disbanded. I gather that only 6% of the business adopted by the GRG ever re-emerged. That is hardly a success. My constituent, Dean D'Eye, now hopes to get litigation funding, so that he can take NatWest to court for the way in which it ruined his business. I cannot say that I blame him for doing so.

3.4 pm

Mark Garnier (Wyre Forest) (Con): It is a great pleasure to follow my hon. Friend the Member for Beckenham (Bob Stewart). I should like to add my congratulations to my hon. Friend the Member for Aberconwy (Guto Bebb) on securing the third of these debates. This is turning into a running series, although I hope that we shall not need a further debate on this matter in the next Parliament because we will have resolved the issue by that time.

Great progress has been made as a result of the huge amount of work that my hon. Friend has done, and it should be recognised that, in many cases, the banks have stepped up to the plate to handle the problems that

they have created. However, we have been left with a cohort of claimants who feel that they are not getting the redress they deserve, and I want to concentrate on them today.

When I consider the plight of those businesses that have been mis-sold interest rate hedging products, I have yet to find a victim for whom I do not have enormous sympathy. This appalling scandal has destroyed many people's lives, including those of people who have not been directly affected. For example, people have found themselves out of a job when their employer went bust as a result of the scandal. Other people have been creditors who could not suffer the cash flow shortfall resulting from banks taking too long to make redress payments, especially consequential loss payments, to the businesses that owed them money.

The scandal's implications go far beyond the victims who were mis-sold swaps, and it is therefore right that we should consider the regulator's response. The response of the Financial Conduct Authority is incredibly important, not least because this is one of the first full-blown scandals to which it has had to respond. How the new regulator behaves over this scandal will set a precedent for how it behaves in the future and tell us whether it is fit for purpose.

I want to raise a couple of issues, given that the regulator has opted for a voluntary redress scheme. That in itself is probably not unreasonable, and it gives the banks an opportunity to show how they have changed their culture and responded to the chaos they have caused. However, this is a brand new way of responding to such a crisis, and it must be looked at very carefully. The briefing note that the FCA prepared for this debate states, in the frequently asked questions section, that the voluntary approach is different from previous redress schemes, citing speed in compensation. Speedy outcomes have not been achieved in all cases, however.

It is noteworthy that the regulator cites part of the Financial Services and Markets Act 2000 as a reason for not having to make public the arrangements between itself and the banks. Any new process needs to be fully transparent if there is to be confidence in that process. There is no confidence in this process, and the situation is fundamentally flawed.

Bob Stewart: How can anyone possibly think that there should not be full transparency in this sort of activity? I do not understand how the FCA can justify not being transparent about all its dealings.

Mark Garnier: I am not sure that the FCA can justify it. The FCA is answerable to Parliament and to the Treasury Committee, and until such time as we can conduct a proper investigation into what it has been up to, how can anyone believe that this is a good system?

Tessa Munt (Wells) (LD): Does the hon. Gentleman anticipate that the eventual outcome of this complete lack of transparency is that the FCA will have to revisit this whole process, as it has done relatively recently with payment protection insurance, because so many people have had a very poor deal?

Mark Garnier: The hon. Lady is absolutely right, and I shall return to that as I make 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 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.

3.17 pm

Roger Williams (Brecon and Radnorshire) (LD): My speech will be relatively short because I have spoken on the subject before. I commend the hon. Member for Aberconwy (Guto Bebb) for the work that he has done on this matter and for obtaining the debate. It is a great sadness that so many businesses have still not been able to come to an agreement with their banks to resolve the outstanding matters. Yes, some businesses have reached agreement, for which we commend them and the system that allowed that to happen, but many businesses are still really suffering.

The damage is not only to individual businesses and individuals—the people who own those businesses, whether they are sole traders or partners. Some of those have

suffered very greatly. They have been impoverished; they have suffered ill health because of the stress and worry caused by the mis-selling of these products. Not only those individuals and businesses, but their whole communities have suffered because people have lost their jobs or businesses have been prevented from expanding.

My constituent, Don Evans of Springdew, would have been able to expand his business greatly if it had not been for the mis-selling of the swaps and the damage caused to his reputation. He runs a business that packages toiletries and pharmaceuticals, and he would have been able to engage in a large contract with a national—indeed, international—pharmaceutical company to package its materials if it had not been for the financial problems he had as a result of the mis-selling of swaps.

The community in which Don Evans's company operates—the top end of the Swansea valley where, unfortunately, unemployment is still relatively high—has suffered as a result of the bank's behaviour. If that is multiplied across the country, taking into account all the communities and all the businesses that have suffered, it has an impact not only on the local economy, but on our national economy. It is a disgrace that some of the banks that were bailed out by this country have caused that problem.

Don Evans was negotiating a facility with his bank, Barclays. He had banked with that bank for many years. The people there were not just bankers but trusted advisers, as he saw them. He was running a relatively small business and did not have the financial sophistication that larger businesses would have, so he looked to the bank for advice. He wanted a facility to buy a partner out of the business and he sat down to negotiate and complete that, when an aptly named Mr Shafto appeared on the scene and said that unless he entered into the interest rate swap, the facility would not be made available to him.

It is sad, in a way, that Mr Evans did not take up the facility, but ended up with the swap and still had to service the swap agreement. As I said, his business has suffered greatly. The hon. Member for Nuneaton (Mr Jones), who is not in his place, said that the FCA agreement says that it should be possible to put people back in the same place as they were before they entered the swap, but unfortunately for Mr Evans, that is unlikely ever to happen. Such have been the financial problems that he suffered and, yes, the damage to his reputation that he will not be able to get back to the place where he started.

Barclays is one of two banks that still link the redress element to the consequential loss element. In Mr Evans's case, redress has been offered but at an entirely inappropriate level of consequential loss

—about 7%—which bears no relation to the damage that has been done to his company. It seems that he will have to go to litigation to receive satisfaction from Barclays. He subsequently changed his bank and is in a much better relationship now with another bank, but that makes it even more difficult for him to come to an agreement. He has been told that there is no point in his writing to or contacting Barclays any more; he either accepts the redress offer and the entirely inappropriate consequential loss offer, or goes to litigation.

That is a tragedy for the firm. It is back on an even keel now and is contributing to its community, but it could have done so much more for that part of the

Swansea valley, which is so desperately in need of employment and manufacturing capacity. To me, the behaviour of the bank was a disaster. I am sure many right hon. and hon. Members have met senior people in the bank who said that they would change their ways, do away with the target culture and be customer-focused. The best way for the banks to improve their reputation would be to come to an agreement with their customers, such as Mr Evans.

3.24 pm

Ian Swales (Redcar) (LD): I rise to join the chorus of thanks to the hon. Member for Aberconwy (Guto Bebb); we all owe him a great debt for his relentless spearheading of our efforts in this long saga. Only a handful of constituents have come forward to tell me that they have been affected by this problem, but I have a very strong feeling that they are only the tip of the iceberg. I think that there are a lot of business people out there who are frightened of their banks and of what might happen to their business reputation if they come forward, or who are so unsophisticated that they do not even know that they have a problem. I think that there are many affected businesses that we do not hear from.

Having said that, I have certainly seen the problem. I welcome what has been done so far with the direct redress scheme, but I still think that it has taken too long. During this period we have seen business collapses and even suicides, although not in my constituency. There are still huge issues remaining. Many Members have spoken of the problems with the consequential loss scheme, and I wish to add my voice to that.

I want to talk in greater detail about the banks' behaviour and what they have done to my constituents. I will talk about one constituent, Mr Stephen Lilley, who operates a single retail shop in a seaside village. I am sure that he would not regard it as an insult if I described him as unsophisticated as far as these products are concerned. Indeed, such is their complexity that I regard myself as unsophisticated, despite being a qualified accountant.

Tessa Munt: It has always struck me that it would be completely logical to require bank staff and independent financial advisers to be qualified to a certain level in order to flog these things. Surely "unsophisticated" means anybody who does not have an equal qualification when buying one of these things.

Ian Swales: My hon. Friend makes an interesting point. I think that even small businesses, such as those mentioned by my hon. Friend the Member for Brecon and Radnorshire (Roger Williams), probably should have had independent financial advice to deal with their own banks, which is a completely unacceptable situation.

I think that Mr Lilley's case has wider implications, although I could equally have used those of other constituents, such as Roy Myers, Martin Johnson and Peter Broom. Mr Lilley took out a loan for his business. He was asked to put up as security his house, his son's house, the commercial property, a share portfolio and the goodwill of the business, which he did. It was a swap product with the additional liability of a credit line, which was not declared at the time. I think that we all know how complex these products are. It was a derivative product that was priced in US dollars and

then converted back to pounds. Mr Lilley had unknowingly fully indemnified the bank for these facilities, including the credit line, which they were not aware of. They have, through a pro bono arrangement, had some very expert advice on their situation. I should say that Mr Lilley made it clear to his bank from the start that he wanted a simple, declining balance loan, but that was never offered to him. He was very keen to repay the loan and not to take out a long-term arrangement, but that is what he did.

Mr Lilley has now been offered an alternative product—a cap—by the independent reviewer. The expert whom Mr Lilley is using believes that it is a regulated product, but the independent reviewer is not regulated to deal with the product, so right from the start there is a question of legality about his being offered that alternative product. At a meeting with HSBC on 24 October, the independent reviewer admitted that he was paid by HSBC, which brings the independence into question. Until that date, Mr Lilley did not know that there was an additional credit line in place, although it is some years since the original arrangement. The failure to disclose that puts a real question mark over whether it was contrary to section 1 of the Fraud Act 2006. It has been impossible to ascertain when the credit line was put in place or by whom. Moreover, the relationship manager was, in effect, selling a regulated mortgage because domestic properties were involved, and they were not qualified or regulated to do so. There is a whole issue about the legality of what the banks were doing. Mr Lilley and his family turned out to be guarantors of the extra credit line, which was secured against their homes, and under an "all moneys" charge they would have full liability. They have consistently asked for information about this, but the bank has still failed to provide it.

On 21 August 2013, an adjudication was agreed, part of the terms of which were that the swap was cancelled. Today, well over a year later, the swap is still in place. This is a small business person running a single shop—a mom and pop business, as the Americans like to call it. He has had to lodge two homes, business premises and a share portfolio worth far more than the loan that he took out. Because of the way that the bank has structured these products, it will not release any of the collateral. Mr Lilley would like to get some of his share portfolio back to help finance the problems he has as a result of the loan, but the bank will not release it. That is because it is itself using the assets that have been lodged for wider purposes. There is an underlying scandal going on.

Mr Lilley's loan agreement says:

"In the event of HSBC's insolvency or default or that of any brokers involved with your transaction positions may be liquidated or closed without your consent. In certain circumstances you may not get back the actual assets which you lodged as collateral and you may have to accept any available payments in cash."

That means: "Your home may be at risk if the bank does not keep up the repayments. Even if the loan is up to date, if the bank or any brokers become insolvent, the bank may call in your assets." That is a very onerous condition. The bank can do this because in 2007 the FCA changed the client asset rules, which contain two important clauses. CASS 3.1.5 says:

"the firm is given a right to use the asset, and the firm treats the asset as if legal title and associated rights to that asset had been transferred to the firm subject only to an obligation to return equivalent assets to the client upon satisfaction of the client's obligation to the firm."

In CASS 3.1.7, the position becomes even clearer:

"the asset ceases to belong to the client and in effect becomes the firm's asset and is no longer in need of the full range of client asset protection. The firm may exercise its right to treat the assets as its own by, for example, clearly so identifying the asset in its own books and records."

That starts to explain why the banks are so reluctant to offer shorter-term products, or different products, as part of the redress scheme: it is because they are using these assets in their own balance

sheets. Between 2007 and 2008, when the regulations changed, RBS added £700 billion of assets to its balance sheet—equivalent to about half the UK economy. I suspect that an awful lot of houses and businesses are on RBS's balance sheet and people do not even realise it. As a major shareholder of RBS, the Treasury needs to examine this, particularly as the Bank of England is saying that it is more likely to let banks fail in future. Many people could find themselves losing businesses and assets they did not even know were part of a bank's balance sheet.

The operation of the compensation scheme, the behaviour of the banks, and, importantly, as the hon. Member for Wyre Forest (Mark Garnier) said, the behaviour of the FCA and question marks over its independence, mean that the scandal is continuing. It really is time for the Government to conduct a truly independent inquiry.

3.34 pm

Bill Wiggin (North Herefordshire) (Con): I shall not trouble the House for too long, but I must draw its attention to my entry in the Register of Members' Financial Interests.

My constituents William and Frances May have brought the actions of UK Acorn Finance to my attention. I understand that the problems with UK Acorn Finance have been raised many times in the House over the past seven years and that at least 40 Members have Acorn victims among their constituents. My constituents tell me that the Financial Conduct Authority claims that it has an insufficient mandate to investigate, while the Financial Ombudsman Service compensation ceiling is inadequate for many commercial businesses impacted by UK Acorn Finance. My constituents would like to know what action the Government are taking to regulate and investigate effectively the actions of the company and whether it should even be allowed to continue trading.

The Connaught Income Fund will also be familiar to many colleagues. It was incredibly disappointing to learn last month that investors and all parties had failed to reach a negotiated settlement to address investor losses in the Connaught Series 1 fund by the FCA, the deadline being 31 October. Will the Government maintain the pressure on the FCA to ensure that it continues to work actively to sort out this mess?

Another of my constituents runs a company called Pixley Berries and claims that he is currently

"receiving the same treatment from HSBC as widely published with reference to RBS."

My constituent has refused to go along with it and is in the process of transferring to another bank. Meanwhile, he has consequential losses of some £500,000, so he estimates that the interest rate hedging product he was mis-sold set back his business by £500,000. He has received £200,000 in redress, but in terms of well considered and evidenced consequential losses he has been offered £5,000 against a claim of £190,000. The reality for a business such as his is that there has been no change in conduct. Does the Minister agree not only that the FCA redress scheme needs to be improved, but that the banks need to change their behaviour fundamentally?

Paul Farrelly: Given that the hon. Gentleman has mentioned RBS, which is owned by the taxpayer, may I add to my previous remarks? DK Motorcycles was not only bounced into the global restructuring group at RBS, but bounced back and forth between Birmingham and Manchester several times. Is it not a duty of the Government to make sure not only that the stables are properly cleaned, but that the shark cage is emptied so that the activities of people in the bank are brought to book and we can have more confidence in RBS in the future?

Bill Wiggin: What is not to love about an intervention about motorcycles? I thank the hon. Gentleman for that. Obviously, the Minister is going to speak, so I will not take too much time. It is right that she should have the opportunity to explain the Government's position, but the hon. Gentleman's point about confidence is absolutely right.

The campaign group Bully-Banks has a number of suggestions—many colleagues have mentioned them—on how to improve the FCA redress scheme. One suggestion targets the fact that many small and medium-sized enterprises were excluded from the scheme because they were deemed to be "financially sophisticated" and therefore able to understand the interest rate hedging product sold to them.

The Government need to create an independent appeal tribunal to determine whether a company was in fact "financially sophisticated" and therefore able to understand what it was buying. One company that would benefit is allpay, which is in my constituency and with which I have worked. It was excluded from the redress scheme because it had more than 50 employees at the relevant time. That cannot be a qualification for understanding a complex financial instrument, so I urge the Government to consider the issue carefully. Apparently allpay falls outside the FCA's unique version of what constitutes an SME, and that cannot be right. That company lost £2.25 million and it has spent the past five years paying it off.

I appreciate that an extension of the FCA redress scheme might open the floodgates to a wave of new claims against other banks and trigger a significant increase in their provisions for mis-selling liabilities. However, I want the Government to support all affected businesses, of whatever size, in this matter. As I have said, the campaign group Bully-Banks wants an independent tribunal to determine "financial sophistication". It wants the redress scheme to be extended so that appeal tribunal decisions are based on what actually happened, not on the size of the company.

I will not detain the House a great deal longer. The FCA has a difficult job, but an important one, and I believe I am registered with the FCA in one of my roles. My plea is for it to focus its efforts on the people who have done the wrong thing, rather than increase the burden of regulation on people who are doing the right thing.

3.39 pm

Cathy Jamieson (Kilmarnock and Loudoun) (Lab/Co-op): Thank you, Madam Deputy Presiding Officer. Sorry, Madam Deputy Speaker. I always do that; I have been thinking too much about Scotland during the day.

I welcome the opportunity to speak in this debate. Hon. Members have given several examples about problems faced by their constituents. As a constituency MP, I have heard from a number of my constituents or small businesses that have suffered similar consequences.

The motion addresses the perceived failure of the FCA redress scheme. I was of course aware that the scheme had attracted criticism. We have heard quite a lot about that today, particularly in relation to some of the problems involved in the cases that hon. Members have raised. I will speak about them in more detail.

Before I consider the merits of the redress scheme, it is worth remembering how we got into the situation of needing such a scheme in the first place. We must therefore again address the mis-selling of interest rate hedging products that made the scheme necessary, as hon. Members have done during the debate.

Hon. Members are probably aware—the banks certainly are—that I have spoken often and at considerable length about the need for banks to eradicate the culture of mis-selling and to put their own house in order. The banks have a duty, whether we call it a fiduciary, an ethical or a human decency duty, to act in the best interests of their customers. Absolutely fundamental to that is the requirement to ensure not only that customers are sold products that they want and need, but that they understand the terms, conditions and caveats that underpin them.

From time to time, things can and do go wrong, and not even the most prescient among us can anticipate all the nuances and fluctuations in the money markets that may affect the products we

purchase. However, just like the rewards associated with any product, the risks must be clearly stated from the outset. It can be argued that interest rate hedging products in and of themselves might not always be bad when sold in appropriate circumstances—they may help to shield bank customers and even small businesses from the risk of sharp interest rates movements—but, as we have heard this afternoon, it is clear that in many cases the risks have not been fully explained to, or fully understood by, the customers.

The FCA has clearly laid out the shortcomings in the information that it has provided. Nearly 19,000 small business customers of major UK banks took part in the review, and among the main problems they highlighted were the poor disclosure of exit costs, the failure to ascertain customers' understanding of risk, the straying of non-advised sales into advised ones—that has been raised this afternoon—and the fact that the sale of products was driven by rewards and incentives. I will briefly take each in turn.

In its briefing, the House of Commons Library gives the example of a customer who was sold an interest rate hedging product that lasted longer than the loan whose risk it hedged. When the bank chose not to renew the loan, the customer was left with a stark choice between paying the extortionate breakage fees and continuing to pay the monthly cost of the hedging product. The latter option has been likened to a customer continuing to pay for the insurance on a car that they have sold. It is important to note that, unlike for a fixed-rate loan, an interest rate swap agreement is separate from the loan contract and must be terminated independently. From some of the speeches in this debate, it is clear that that has not always been entirely understood by those involved. Repaying the underlying borrowing does not automatically terminate the interest rate structures, and as we have heard, customers are not always made sufficiently aware of that.

Most of us who do not work in finance, banking or associated professions will perhaps have a rather sketchy understanding of the risk. There is nothing wrong with hedging against risk; it is a widely used practice that has occurred in many different manifestations for many years. However, the concept of hedging against risk has spawned a diverse range of products that are sometimes dizzying in their complexity, even for those who perhaps run their own businesses and think of themselves as if not "sophisticated" in the way defined, none the less as having a reasonably good handle on things, yet they find themselves caught out.

Derivatives are the most common example of that. Interest rate hedging products are not as complex as some derivatives, but they are complex enough to confound the unwary, especially where they involve structured collars that can effectively result in customers paying more if interest rates fall beneath an agreed level. That requires a finely balanced judgment by any customer, and an understanding of the vagaries of interest rates. It is crucial that the bank selling interest rate hedging products explains and defines the product to the customer and ensures that it matches their circumstances, but as we have heard, many banks did not do that.

Bob Stewart: Surely it is the bank's duty when it starts to fiddle around with interest rates to warn the customer that that is happening and not just suddenly do it.

Cathy Jamieson: The hon. Gentleman makes a good point, and some of the concerns and examples have been about banks that seemed to be selling products, but not outlining the potential for interest rates to drop or giving customers information about the bank's own forecasts. We have real difficulties with such circumstances.

Paul Farrelly: One issue that arose in many cases is that firms were not given a choice—the issue of conditionality, when a loan was advanced only if the customer took out a hedging product that was acceptable to the bank. I would want confidence that an easy test is being applied in the review process: if the bank was not the provider of the product, would it have accepted the company entering into an open-ended obligation? If the answer is no and the bank would otherwise have refused the loan, the sale was clearly inappropriate.

Cathy Jamieson: My hon. Friend makes a good point and I was going to say something about the circumstances that he and my hon. Friend the Member for Dumfries and Galloway (Mr Brown) mentioned and that element of compulsion. Clearly, many people felt that they had no option but to take those products or else they would not get the loan. As I am sure everyone understands, there are circumstances in which people rely on banks, and they trusted them and believed they were getting good advice.

Ian Swales: To emphasise that point, a constituent of mine was presented with an agreement to sign at the point when they thought they were signing a straightforward loan agreement. They literally did not have time to think, let alone make a choice.

Cathy Jamieson: Indeed, the hon. Gentleman makes a useful point and similar circumstances have been brought to my attention of people who thought at the point of signature that all they were signing was a refinancing agreement, and they had not understood the full consequences. We must drill down on those issues to ensure that people get the justice they deserve.

In some instances, product sellers painted only a partial picture of the product and the nature of the protection offered—I see the Minister is listening intently and I am sure she will agree. That resulted in customers purchasing products that were not appropriate to their circumstances, with the result that they lost money or spent money unnecessarily.

In the review, the FCA draws a distinction between sophisticated and unsophisticated customers. Under the terms of the agreement with the banks, only the cases of customers deemed to be unsophisticated were subject to the review. The FCA defines unsophisticated customers as those less likely to have had the expertise or resources to seek advice before purchasing an interest rate hedging product. People might suggest that that is a common-sense distinction, and one that correctly focuses on customers who were less likely fully to comprehend the nature and consequences of the product they were being sold, but the question of how the distinction was arrived at is an entirely different one. It will be interesting to hear the Minister's view on that, and on the question of whether people ought to have the opportunity to appeal if they were put into the sophisticated category.

Paul Farrelly: I was going to ask the Minister about the tests but, as my hon. Friend has mentioned it, I will ask her. The tests applied in the review reflect the definitions in the legislation that allows small companies to file less information than large companies. The test of sophistication is size, and yet small-ish or relatively small firms were deemed as sophisticated. Does she agree that that needs to be reviewed?

Cathy Jamieson: My hon. Friend once again puts forth his points coherently. I am sure the Minister is considering her response. We must always look for unintended consequences. Did the review pull in all possible situations? Perhaps it could pull in more if the Minister is of a mind to look at things slightly differently.

Non-advised sales perhaps strayed into advice. The FCA describes non-advice sales as ones in which

"no personal recommendation is made and you leave the customer to decide how they wish to proceed."

There is an analogy with other generic advice. If someone recommends that a person should buy household contents insurance without mentioning a specific insurer or policy, and if the recommendation is unconnected with the sale of a contract, that would not fall within the definition of advice. The FCA is clear that sales staff should avoid making personal recommendations, and therefore giving advice. It states that sales staff

“should confirm that the decision is the customer’s and that the”

salesperson “cannot give them advice.” The problem in many of the situations we have heard about today appears to be that sellers actively recommended and even promoted IRHPs to customers. My hon. Friend the Member for Newcastle-under-Lyme (Paul Farrelly) outlined that in some detail, as did my hon. Friend the Member for Dumfries and Galloway. There were devastating consequences for businesses and lives in those situations.

I have criticised the sales-driven culture—the culture of targets, rewards and incentives—in the past. The banking sector will say that it is trying to address that culture and to move to a different approach, but the reality is that the culture was imported into retail banking from the more speculative areas of investment banking, where the risks were greater and the rewards higher. It simply was not appropriate for many of those small businesses and customers. Some of the overt incentives to sell such products, whether or not they were in the customer’s interest, have been removed, but I continue to worry. I want the Minister’s assurance that we are on top of the situation, and that there is no indirect pressure on staff to sell those products. We need to continue that culture change in our banks. That has to come from the top and go right through to the bottom.

On the perceived problems with the FCA scheme, the scheme was supposed to ensure that small business customers who were mis-sold products received an offer of fair and reasonable redress as soon as possible. The FCA tells us that more than 99% of redress offers have been communicated to almost 17,000 small businesses. More than £1.5 billion has been paid out in redress so far, including £300 million in compensation for lost opportunities. However, I think it would be fair to say, given the debate this afternoon, that it is evident that people still have concerns about the scheme’s shortcomings. I hope the FCA will take that into consideration, with support from the Minister. Customers who purchased caps that place a limit on interest rate rises are not included in the scope of the review, unless they have complained to the bank during the course of the independent review and are non-sophisticated customers. Other types of hedged loans were not included in the review process either.

My hon. Friend the Member for Newcastle-under-Lyme mentioned the case of Crestsign *v.* NatWest, illustrating the difficulty that some small businesses have experienced in getting redress from banks. The judgment in the case concluded that the bankers

“did not show themselves worthy of the trust that was placed…but unfortunately for Crestsign, the common law provides…no remedy because the banks successfully disclaimed responsibility for the advice they gave on the suitability of the swap, which was negligent but not actionable.”

In this case the bank managed to successfully argue that, since it did not owe its customer any duty of care, it had no obligation to pay compensation. We can see

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why people are concerned. The bank was able to argue its case after the event and was not held to account on whether it should have sold the product in the first place. Worryingly, the independent reviewer KPMG—independent reviewers are a crucial part of the FCA redress process—seemed to agree with the verdict. Does the Minister think that appeals need to be looked at?

I argued at the start of my speech that what we really need is cultural change.

Steve Rotheram: Will my hon. Friend give way?

Cathy Jamieson: I apologise, but I am at the limit of my time.

Will the Minister please address the lack of an appeal process? Will she address tax treatment by HMRC and look at having a review of compensation levels? I look forward to hearing what she has to say.

3.57 pm

The Economic Secretary to the Treasury (Andrea Leadsom): I join the long queue of Members congratulating my hon. Friend the Member for Aberconwy (Guto Bebb). His leadership has been a sign of Parliament at its best. We are trying to deal with a very real problem and like a terrier he has stuck to it, for a few years now, to shed light on an issue that has shown the banks at their very worst. I am delighted that so many Members have attended the debate. I congratulate them on showing great generosity of spirit in being here and putting the case for their constituents.

I would like to start by pointing out, as other hon. Members have, that progress has been made. This is the first time there has been a voluntary redress scheme on this scale. All of us were disappointed at its slow start, but we are very pleased that the review has progressed well. I can tell the House that 17,000 SMEs took part in the review. Some 91% of sales were deemed to be non-compliant, which is a totally shocking statistic. Some 14,000 cash offers have been made and more than £1.5 billion has now been paid out to the more than 10,000 SMEs that accepted the offer. That progress is significant, but Members are right to point out that there is a cohort of people who have not yet received the attention or the fairness to which they are absolutely entitled. I am not here to be an apologist for either the banks or the FCA, which is running the redress scheme. I can assure all Members that if they write to me about individual cases I will be happy to investigate further on their behalf.

Dr Phillip Lee (Bracknell) (Con): I spoke a short time ago to Jonathan and Katie Friedman, constituents who live in Finchampstead. A building society, not a bank, sold them a hidden swap product not covered by this redress scheme. Building societies trade on the basis of being ethical? Does the Minister agree that this is hardly ethical behaviour by a building society?

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.

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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 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 the way in which the interest rate swap redress scheme works.

I want to move on because there is another debate to follow. Let me address some of the questions raised by my hon. Friend the Member for Aberconwy. He asked why some banks are not splitting the original loss and the consequential losses, and he pointed out that the amount of redress paid is inconsistent between banks. He mentioned the fact that a particular whistleblower says that banks have pressurised independent reviewers to serve the banks' interests rather than those of the SME, and argued that the FCA is not showing the bank-by-bank redress numbers. He asked whether we should set up an appeals process for reviewers to look at each other's banks' reviews, and spoke

about the lack of payment of consequential losses beyond the 8% that is normally provided. He addressed the issue of HMRC's tax treatment of redress and of whether embedded swaps should be included. I want to run through those issues very quickly.

I can assure my hon. Friend and all Members that the FCA has been determined throughout the process to get to the bottom of this. Occasionally, Members might think that the FCA is not interested or not keen to resolve the matter, but that could not be further from the case. In particular, the FCA carefully considers any variance in redress offers to make sure that standards are applied consistently. It selects individual cases for review based on feedback from customers, campaign groups and MPs to ensure these have been dealt with fairly. Independent reviewers report regularly to the FCA, both on the judgments they are making and on how the banks are performing, and independent reviewers regularly meet each other to ensure a consistent approach to assessing claims.

My hon. Friend referred to the agreement between the FCA and the participating banks. As I understand it, this agreement sets out the principles of how the review should have been undertaken. I understand, too, that the FCA is prohibited from releasing these agreements by confidentiality restrictions. I can assure

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Members, however, that I will write to the FCA and ask for clarification, bearing in mind Members' desire to have that made public if possible.

Ian Swales: The Minister has talked about the independence of reviewers. Even the FCA's notes state that it has had to require banks to change independent reviewers when there has been a potential conflict of interest. It is clear that reviewers are not always as independent as they should be. What is the Minister doing about that?

Andrea Leadsom: The FCA has considered whether reviewers are independent, and the instance cited by the hon. Gentleman probably demonstrates that it is actively taking part in that process. As I have said, however, if Members want to raise particular cases with me, I will look into them.

My hon. Friend the Member for Aberconwy referred to the allegation by a former independent reviewer from KPMG that the banks had applied undue pressure for a change in a redress determination. That is a very serious claim, and I know that the FCA has taken it very seriously. The regulator has given a reassurance that it has maintained close oversight of the relationship between banks and their independent reviewers throughout the review, and that it does not believe that that allegation is supported by the facts.

A number of Members raised the issue of embedded swaps. It is important to define that term. I understand it to refer to fixed-rate loans with an economic, or mark-to-market, break cost. As is standard practice with fixed-rate loans, a break cost is incurred by a borrower who pays off a loan early. The tradition in the United Kingdom has been that the terms and conditions of contracts between businesses, such as loans, are not generally prescribed by the Government, and we normally expect businesses to take positive action. First, they can complain to their banks if they are unhappy with their fixed-rate loans, and many customers have already taken that route. The FCA monitors banks' complaint-handling processes, and takes action if it sees a problem. Secondly, smaller businesses can have recourse to the Financial Ombudsman Service.

What is vitally important—and the Treasury has ensured that this will happen in future—is that when a business enters into a fixed-term loan, the terms of the contract and, in particular, the way in which break costs are calculated are absolutely clear. We have secured a voluntary agreement, through the British Bankers Association, that banks will provide the same level of disclosure of features within fixed-rate loans— such as break costs—as applies to interest rate hedging products. Most important, the banks will ensure that break costs are fully explained, and that worked examples are provided.

A number of Members also voiced concerns about the number of businesses that have been assessed as sophisticated and therefore fall outside the scheme. The Government have made it clear that when a business lacks the necessary skills and knowledge fully to understand the risks posed by these products, it should receive appropriate redress. So far, about a third of businesses have been deemed to be sophisticated and to fall outside the scheme. There has been criticism of that: many have suggested that all businesses should be covered. The Government believe that there needs to be a defined cut

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off-point at which more sophisticated businesses take responsibility for understanding the products they are purchasing. Failure to introduce that cut-off point would weaken the incentives for businesses to act sensibly when purchasing financial instruments, and could open the floodgates to any businesses that had lost out as a result of a financial transaction.

However, the FCA has amended the way in which the sophistication test criterion can be applied, and information about that is available. Time does not permit me to give every detail of where we started and where we are now, but the aim has been to ensure that all businesses that are unsophisticated can fall within the scheme. There may well have been some incorrect reassessments, but there have been very few subsequent complaints.

Bill Wiggin: Will my hon. Friend give way?

Paul Farrelly: Will the Minister give way?

Andrea Leadsom: I will give way once more, but not, I am afraid to the hon. Member for Newcastle-under-Lyme (Paul Farrelly), because time is short.

Bill Wiggin: It is very generous of my hon. Friend to give way, and I am delighted by what she has said. Can she also reassure the House that the number of employees will not be a criterion for sophistication?

Andrea Leadsom: I can certainly tell my hon. Friend that the number of employees is a factor, but it is not necessarily the only factor, so the fact that a business has more than 50 employees may not necessarily make them a sophisticated investor.

Paul Farrelly *rose—*

Andrea Leadsom: I am sorry, but I will not give way.

Many Members have mentioned the financial ombudsman scheme's money award limit that it is able to offer to customers. This level was deemed to be most appropriate. It does ensure that most complaints made by consumers and micro-enterprises can be addressed, but reflects the fact that cases involving very large sums of money may be more appropriately dealt with by the courts, rather than an informal process that has limited prospects of appeal.

In the event that the financial ombudsman scheme considers that fair compensation requires payment of a larger amount, it can make a recommendation that a firm pay the balance. That decision on the higher amount is not binding on the firm, but there is evidence that suggests that firms that subsequently go to the courts will find the courts take into account the recommendation of the FOS in determining what the outcome should be.

Mr Marcus Jones: Does my hon. Friend not accept, however, that many of these businesses are extremely small and are not in a position to go to law to see the ombudsman's recommendation backed up, and that therefore the ombudsman's remit in terms of the damages it can impose needs to be wider?

Andrea Leadsom: I agree with my hon. Friend in principle, but, as I have just set out, the intention has been that the sophistication test captures those who are

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not sophisticated as well as those businesses that are small and do not have the means to go to the courts. In addition, if they have been to the FOS, the intention is that that would cover the vast majority of cases. As I have said, I urge Members to write to me with any specific cases that they want me to look at.

Paul Farrelly: Will the hon. Lady give way?

Andrea Leadsom: No, I am sorry. The hon. Gentleman has had many opportunities.

It is important to note that the aim of redress is to put the customer back in the position they would have been in if a mis-sale had not taken place. The FCA has been clear that the appropriate redress for each customer will be determined on the basis of what is fair and reasonable. This could include, for example, the replacement of an existing product. That might be appropriate in the case of a business that was highly leveraged. In these instances, it seems reasonable that redress can consist of providing the small business with the alternative product they would have purchased, and refunding the difference in costs incurred by the business as a result.

Members have raised the question of whether there should be a separate appeals process. I would, however, reiterate that the role of the independent reviewer is to be that appeal—to ensure that the process is fair and businesses have adequate opportunity to put their case. Furthermore, eligible businesses have recourse to a further appeal to the FOS if they are not happy with the outcome of their review.

Many Members also raised the issue of Barclays and its decision not to delink the original loss and consequential losses. I think at the moment that that decision is one for Barclays to have made, but after hearing the strength of feeling in the Chamber today I will write to Barclays to ask it to explain precisely why it feels this is fair to customers and to ask it to consider whether it would be willing to conduct its review in a different way. I understand that Barclays has agreed to split the payment for those customers in financial distress, but I will follow that up with the bank.

I shall now return to the specific points Members have made. The hon. Member for Newcastle-under-Lyme raised the case of DK Motorcycles, which failed the sophistication test. He made a very good case in supporting his constituents, and I will take it up on his behalf. He did not say whether the company's situation was now resolved and he named RBS as the culprit. For many small businesses the new competition being promoted by this Government—the arrival of new banks, particularly in the SME market—will be vital.

My hon. Friend the Member for Redditch (Karen Lumley) named HSBC as the bank in the case of her constituents the Parsons, who had an ethical business. There were significant consequential losses and she felt that the offer made by the bank was not significant. The hon. Member for Dumfries and Galloway (Mr Brown) mentioned Barclays as the bank to the leisure park business in his constituency. He cited fear of talking to the bank as one reason why some small and medium-sized enterprises will not use this redress scheme—they are afraid of the consequences of taking on their bank.

My hon. Friend the Member for Hexham (Guy Opperman) gave an informative intervention, particularly about the risk of having to go to court and the fear of

taking on a bank, given the inequality in the resources between a small business and a bank. I take that very much to heart. My hon. and learned Friend the Member for Harborough (Sir Edward Garnier) named RBS as the bank for his constituents Mr and Mrs Hamblin and their property company. He asked me particularly to lean on the FCA to ensure that it is doing a thorough enough job in enforcing the redress scheme, and I am happy to do that.

The hon. Member for Rochester and Strood (Mark Reckless) asked why information on redress is not shared in detail and why consequential loss claims have almost all been turned down. Information on bank-by-bank redress is available but in aggregate form. One reason that has been

put to me for that is a sense that if a bank just pays out, there is an implication that they may have been guilty as charged, whereas in fact the ability to offer an alternative product will depend on the bank's product range and its ability to offer a suitable alternative product. I will look into this further, but that is potentially partially an answer. On consequential losses, 8% of consequential losses is deemed to be sufficient in most cases, but, again, if Members want to write to me, I will look into individual points.

My hon. Friend the Member for Nuneaton (Mr Jones) talked about how linking simple to consequential losses is very unfair. He feels that the Financial Ombudsman Service is not able to enforce enough compensation. He should be aware that FOS is consulting in the new year on that point. He also mentioned the issue of the tax treatment of redress, and I will raise that with Her Majesty's Revenue and Customs, as a fair point has been made by many hon. Members.

The hon. Member for Ceredigion (Mr Williams) raised the issue of tailored business loans, which I have already addressed.

My hon. Friend the Member for Beckenham (Bob Stewart) raised the case of Mr D'Eye, who was put into the RBS GRG and then administrators were sent in. The FCA is looking at the accusations that have been made about the way RBS has treated small businesses and will report on that in due course.

My hon. Friend the Member for Wyre Forest (Mark Garnier), an ex-colleague of mine on the Treasury Committee, made important points about the cohort of claimants who do not feel they have received justice. He discussed how this is the first major scandal the FCA has had to deal with and said that it should see that it is vital it handles it properly. I can absolutely assure all Members that I will do my best to ensure that that is the case.

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The hon. Member for Brecon and Radnorshire (Roger Williams) raised the case of Springdew and how a mis-sale cost the whole community, naming Barclays in that case. The hon. Member for Redcar (Ian Swales) named HSBC and made the point that his constituent Stephen Lilley was sold an extraordinarily complex product. Finally, my hon. Friend the Member for North Herefordshire (Bill Wiggin) raised another case involving UK Acorn Finance, which the FCA is currently closely looking at.

I wish to conclude by saying that SMEs are the lifeblood of our economy, and it is vital that this Government do everything we can to support them. Therefore, I urge Members not only to tell me about specific cases, but to have confidence in the fact that the FCA and the Treasury are determined to get to the bottom of this.

4.19 pm

Guto Bebb: This has been a worth-while and wide-ranging debate, and it is clear that specific and, in some cases, serious concerns have been raised. Although I welcome the Minister's comments, especially on the tax issue, and her willingness to deal with the FCA on specific cases, I also believe that many people's confidence in the independent reviewers has been tarnished by this week's revelations in relation to the whistleblower. I must stress that the denial of the claims by KPMG that there was no contact whatever between the independent reviewers and members of staff at RBS can be contradicted simply by looking at the LinkedIn profiles of people who work at KPMG on project Rosetta. We could also look at what the members of staff at RBS claim, as they say that part of their responsibility is to talk to each other. I think that the denials that have been made thus far are unsatisfactory. As there is another debate to follow, I will conclude by saying that the motion should be supported as it stands, and that I commend it to the House.

Question put and agreed to.

Resolved,

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.