

Interest Rate Hedge Product mis-selling: who needs to be authorised to handle such claims

In 2012 the Financial Services Authority (now the Financial Conduct Authority) identified failings in the way that banks sold Interest Rate Hedge Products (IRHPs). The banks involved agreed to review the sales of IRHPs and this process began in May 2013.

Every qualifying case is overseen and verified by an independent reviewer. The banks are in the process of contacting customers with the outcome of the review and where appropriate, an offer of basic redress. For those that choose to, there is an option to present a consequential loss claim where appropriate after acceptance of the basic redress.

We understand that a number of businesses who were sold IRHPs are seeking advice (in relation to the review and redress offer) from a variety of professionals including accountants, forensic accountants, actuaries, derivatives specialists and business compensation specialists. Some are also seeking advice about potential consequential loss claims arising from those mis-sales.

It has also come to our attention that some of those professionals assisting businesses in respect of the redress offer and potential consequential loss claim are likely to be providing regulated claims management services. Anybody providing regulated claims management services must be authorised by the Claims Management Regulator or exempt from authorisation.

Requirement to be authorised



Under the Compensation Act 2006 ("the Act"), any persons wishing to carry out a regulated claims management service must be authorised by the Claims Management Regulator unless they are exempt from authorisation.

This bulletin is intended to provide guidance to:

- Businesses operating in the field of IRHP mis-selling as to whether the business is carrying out a regulated activity and therefore requires authorisation
- Solicitors and claimants who are seeking to instruct a business to provide expert advice
- Claimants who are seeking an expert to provide advice and representation in the field of IRHP mis-selling and should be aware of the requirements for authorisation

Sector

The sectors that are regulated are defined in The Compensation (Regulated Claims Management Services) Order 2006 and include claims in relation to financial products or services. IRHP mis-selling falls within this category as do any consequential loss claims arising from the mis-sale.

Services

The following services, set out in the Order referred to above, are covered by the Act and engaging in them will be providing a regulated claims management service:

- **Advertising** for or seeking out persons who may have a claim. This includes usual marketing methods as well as obtaining consent for a third party to contact a client about a potential claim, asking a potential client if they have a claim, seeking out clients who require advice on IRHP claims including consequential loss claims. If a business is contacting existing clients about these types of services, seeking new potential clients who may have a claim or stating that they can

provide these services on their website or in other marketing literature.

- **Advising a claimant** or potential claimant in relation to his/her claim or cause of action about a mis-sold IRHP. This will include advice upon any redress offer or potential consequential loss claim.
- **Referring details of a claim** or claimant, or a cause of action or potential claimant, to another person for a fee, gain or reward.
- **Investigating** or commissioning the investigation of the circumstances, merits or foundation of a claim with a view to using the results in pursuing the claim. This would include the commissioning of any report challenging an offer of redress or assessing a claim for loss including consequential.
- **Representation of a claimant** in writing or orally. This includes communicating with a financial institution, the Financial Ombudsman Service or the Financial Services Compensation Scheme about a mis-sold IRHP on a client's behalf.

Exemptions

The Act and The Compensation (Exemptions) Order 2007 set out exemptions from the need to be authorised and some of those that may apply to IRHP review activity are listed below:

- **Legal practitioners** providing services for which they are regulated by another regulator i.e. a solicitor, barrister or a Fellow of the Institute of Legal Executives. Where a legal practitioner has set up a separate corporate body, for example to market its services, that body is not exempt and would require authorisation. Other classes of legal practitioners can be found in the [Compensation \(Exemptions\) Order 2007](#).
- **Persons providing claims management services that are already regulated activities under the Financial Services and Markets Act 2000** or who are exempt from the need to be authorised under that Act. This includes insurance companies. Any business seeking exemption for authorisation within this provision should seek clarification from the Financial Conduct Authority that the services that they are offering do fall within activities under the Financial Services and Markets Act 2000
- **Firms authorised by the Financial Conduct Authority (FCA) or one of their appointed representatives** who in the course of carrying on a regulated activity (e.g. advising on investments) only notify clients that they may have a claim against a previous adviser. Firms that fall within this category would not need to be authorised

as this activity is likely to be an “ancillary activity”. However, where an FCA authorised firm (or appointed representative) provides a regulated claims management service for which they receive remuneration, then the FCA authorised firm (or appointed representative) would need to be authorised.

- **Persons who give or prepare to give evidence.** This covers, for example, people retained by claimants, defendants, insurers and solicitors to provide evidence about the cause or nature of a claim. In practice it is likely that only businesses instructed by a solicitor or a claims management business to commission an expert witness report for the purpose of litigation will be exempt. If a business is instructed by the claimant directly then they are unlikely to be exempt and will need to be authorised.

Enforcement

Those who believe they may be providing regulated claims management services should cease carrying out those activities until they are authorised or satisfied that they are exempt. Those continuing to provide regulated claims management services without authorisation (or an exemption) will be committing an offence under the Act and subject to potential enforcement action.

Enforcement action will be taken in accordance with our published enforcement policy at: www.gov.uk/government/publications/claims-management-regulator-enforcement-policy

Further information

If you require more information about who needs to be authorised please read our guidance note at: www.gov.uk/government/publications/claims-management-companies-who-needs-to-be-authorised

Contact our Business Team

Telephone: 0333 200 1320
(Lines open Monday to Friday 9am - 5pm)

Email: business@claimsregulation.gov.uk

Website: www.gov.uk/moj/cmr

Please note that this bulletin is not legal advice. If you require legal advice regarding your obligations under the Compensation Act 2006, you should request advice from a solicitor or barrister.