



**The Non-Executive Directors of the FCA
12 Endeavour Square,
London E20 1JN**

OPEN LETTER TO THE NON-EXECUTIVE DIRECTORS OF THE FCA

Thursday, February 17th, 2022, by Email only.

YOUR FAILURE TO ACT ON THE FINDINGS OF THE INVESTIGATION THAT YOU COMMISSIONED

Dear Liam Coleman, Bernadette Conroy, Jeannette Lichner, Richard Lloyd, Alice Maynard, Tommaso Valletti, Sam Woods and Charles Randell,

In June 2019 it was reported that the Non-Executive Directors, and specifically Chairman Charles Randell, of The FCA commissioned the independent investigation into the FSA/FCA IRHP Review scheme that was undertaken by John Swift QC.

As you will be aware the findings of that investigation were published in December.

It is reasonable to presume that the Non-Executive Directors were sufficiently concerned by the widespread backlash and complaints in respect to the IRHP Review, so as to have ordered the investigation in the first instance.

One of the key, and most frequent of those complaints was specific to the unfair, and potentially unlawful, retrospective 're-classification' of the 'sophistication' of the customers to whom these products were sold.

Indeed, FCA statistics published specific to the IRHP Review confirm that:

- A) 10,577 customers were classified as 'sophisticated' for the purpose of the IRHP Review, and therefore excluded from it on that basis
- B) Of these, 4,977 were excluded on an 'Objectively sophisticated' basis where the 'small companies test' was used
- C) Of these, 5,309 were specifically excluded as a result of the new sophistication criteria that was introduced in January 2013 and whereby all customers that held IRHP's with a notional value of more than £10mio were excluded on that basis.

I should remind you that those excluded as a result of the sophistication criteria introduced in January 2013, had already been written to by their banks between June and December 2012, confirming that they were eligible for the IRHP Review and their case would be reviewed accordingly. It was only later in 2013 that they received correspondence from their bank reversing this position altogether and entirely on the basis of this new criteria.

Given the significance of this particular issue in respect of the need for the independent investigation, it is therefore a concern to find that the FCA is seeking to ignore Mr Swift's findings on this issue.

It is perhaps of greater concern that Mr Randell and the other FCA Non-Executive Directors that commissioned this investigation, have either chosen to ignore the findings also and/or support the FCA's position and efforts to ignore those findings.

Mr Randell's response has been limited only to a brief Foreword in the FCA's response to Mr Swift's report:

"But it also contains important findings that there were significant weaknesses in the processes adopted, and it makes important recommendations to ensure that we the FCA, as successor body to the FSA, continue to learn the lessons from this especially large and complex voluntary redress scheme"

This is a concern in respect to the fact that the scheme was not essentially 'complex'. It was actually very straightforward; Customers either understood these products or they did not, and according to most professionals and experts, it can be easily summarised by *"the very act of purchasing one of these products, is evidence that the customer did not understand the product."*

However, it is of greater concern that whilst confirming that the objective was to *"learn lessons"* and acknowledging that there were *"significant weaknesses in the processes adopted"*, that the Non-executive Directors are choosing to limit their interpretation and application as to what constitutes 'lessons learned'.

'Lessons learned' requires a two-way vision. They must be applied going forward and applied looking back. A lesson is not learned by justice not being seen to be done. It is the overriding objective of a fair and just system. Lessons are rarely learned when there is a lack of accountability for those responsible, and lack of appropriate redress for victims.

There is also the issue of that lack of moral hazard that these repeated failures represent, and only serve to encourage or facilitate further wrongdoing and further oversight failures.

Please therefore provide an explanation as to why The FCA Non-Executive Directors are failing to act upon the findings of the very investigation that you commissioned.

I look forward to hearing from you.

Kind regards,

A.P. Agathangelou

Andy Agathangelou FRSA
Founder, Transparency Task Force; a Certified Social Enterprise
Governor, Pensions Policy Institute

Chair, Secretariat Committee, APPG on Personal Banking and Fairer Financial Services
Chair, Violation Tracker UK Advisory Board
Telephone: +44 (0)7501 460308