

Insight into the long awaited:-

FCA Report into GRG

By James Hayward CEO RGL



Recent press coverage of the much delayed FCA Report into GRG points to yet more delay. The extant delay is due in no small part to ongoing discussions between RBS and the regulator with respect to what will be in the Report.

There have been rumblings in the City and within legal circles that these delays are actually a deliberate strategy resulting from collusion between the FCA and RBS to time bar as many claims against RBS as possible.

It is therefore timely, in our view, to share our views on the matter.

The multitude delays in themselves justify a healthy degree of scepticism about the Report. It is also well known that the authors have invited other interested parties to preview the report in return for giving certain undertakings, which further damages the integrity of the whole process. This widespread disquiet is compounded further still, when one considers the credibility of the “skilled person” charged with producing the report.

Taking all these factors together, the expectation is for a deeply flawed report: a whitewash. As for any compensation scheme, even if it does become a reality, the FCA already has a very chequered history when it comes to the implementation and operation of similar schemes.

Expected Whitewash

- Promontory Financial Group was appointed by the FCA in January 2014 as a “skilled person” to investigate the conduct of RBS’s GRG division. However, Promontory has been accused in the US of a whitewash in producing a severely biased report concerning alleged sanctions-busting and money laundering by a UK bank (Standard Chartered).
- Promontory ultimately had to settle these charges with the New York State Department of Financial Services. As part of the settlement, Promontory admitted failing to meet the standards of the US regulator and agreed to a six month ban on any regulation related work for New York regulated banks, as well as paying a \$15m fine.
- Commentators in the US consider that Promontory is now a “radioactive” name in the US, and have expressed surprise that the FCA is using it as a “skilled person”. These

views have been widely reported by UK media, such that the credibility of the RBS report will be publicly attacked whatever its conclusions.

The Flaws of a previous FCA Compensation Scheme

- The FCA's swaps compensation scheme has been heavily criticised, and has left many potential claimants either without any compensation at all, or with very limited compensation. It took several months of negotiation between the FCA and the banks involved before the scheme was even rolled out. It is therefore very unlikely that any RBS GRG scheme will be ready until much later this year at the very earliest.
- Once up and running in June 2012, the swaps scheme was actually administered by the nine banks originally found guilty of mis-selling the interest rate hedging products. The scheme involved several layers of technical qualifying parameters, including: the type of product (with many swaps being excluded from the scheme); the date (if before the guillotine date, then you were excluded from the scheme); client categorisation (more sophisticated clients were excluded); a general "did the customer know what it was doing" requirement; and certain financial criteria (if part of a bigger group or if turnover or employee numbers were over certain limits, then the complainant was excluded).
- Even if eligible, complainants had to agree to settle claims for consequential loss at a minimal amount. It was possible to reject this and seek to recover more, but it is notoriously difficult. Indeed, the implementation of the compensation parameters has itself spawned legal proceedings. Many GRG claimants will have significant consequential losses, which would be very unlikely to attract compensation.
- Although an estimated 30,000 businesses were mis-sold swaps between 2003 and 2012, the scheme has paid out a relatively low "per head" amount across the significantly reduced number of qualifying (13,200) businesses. It is very likely that many thousands of GRG claimants would sit outside any compensation scheme.
- The Treasury Select Committee said after a hearing in February 2015, "The Committee remains seriously concerned about the [swap] scheme's effectiveness and lack of transparency".

Time-Bar

- In addition to the alleged deliberate strategy of the FCA and RBS to time bar as many claims as possible, we know that the FCA is not considering RBS's conduct before 2008, effectively treating claims arising before this date as time-barred, and so not something for the regulator to be concerned about.
- However, time-bar should be of real concern to potential claimants. Waiting for RBS to agree the scheme with the FCA, waiting to be told whether you potentially qualify for compensation, and then waiting to be told how much (or little) compensation you are entitled to would not and does not stop legal time (limitation) running. Once started, only issuing a writ (claim form) at Court stops time running.

In short, if and when the FCA's report into GRG finally emerges, and even if it recommends a compensation scheme, the prospects of it being the panacea of recompense that some ex-business owners might hope or expect it to be, are remote. It is not in the interests of GRG claimants to wait for the FCA's report; many GRG claimants

know this already - they will have had direct or indirect experience of the debacle of the FCA's swap scheme.

To sum up, the FCA report will probably apportion some blame to appease critics and say something like "RBS was over rigorous in applying its procedures and may have caused damage in some cases", but it will stop short of saying there was widespread or systematic criminal or tortious illegality.

It may well recommend, or RBS could well of "its own initiative" offer as a "good corporate citizen" offer some form of lame very restricted "voluntary" compensation scheme which would be more about capping liability than seeking to redress the wrongs done to UK small and medium business owners by RBS.

This report is all about running claimants out of time and we don't expect any meaningful redress scheme to come out of it. We therefore urge everyone who suffered at the hands of GRG to come to RGL to register at www.sueRBS.com. We have an experienced professional team in place, including heavyweight City based solicitors and QCs experienced in this type and level of litigation and funding from an experienced professional City based litigation funder.

Obviously, we would be absolutely delighted to be proved wrong in this regard. However even if a viable and workable compensation scheme is put in place, most RBS GRG victims will require specialist assistance to guide them and negotiate on their behalf, as is the case with the IRHP compensation scheme. We are obviously competent and would be prepared to assist in this regard if it were to become a reality.

Either way, potential claimants need to act now.

Contact

Neil Hargreaves

e. neil@sueRBS.com

m. +44 (0)7796 958750

RGL Management

RGL Management Limited
6 New Street Square
New Fetter Lane
London EC4A 3AQ

www.sueRBS.com