

Interest Rate Swaps Investigation – Proposed Legal Proceedings

Questions & Answers – Updated 17 December 2013

Which banks does the Commission intend to take court action against over the marketing and sale of interest rate swaps to rural customers (farmers)?

ANZ New Zealand Bank Limited (ANZ)

ASB Bank Limited (ASB)

Westpac New Zealand Limited and Westpac Banking Corporation, (together known as Westpac).

Background to investigation and decision to take court action

The Commission commenced enquiries into the sale of interest rate swaps (swaps) in August 2012 following media articles alleging that some New Zealand banks had mis-sold swaps to farmers. The Commission contacted the major New Zealand retail banks to ascertain which banks had sold swaps to the rural sector. The Commission was also aware of an enquiry in the United Kingdom by the Financial Services Authority (now the Financial Conduct Authority) over the sale of interest rate hedging products.

Since then the Commission has gathered extensive information from the banks, affected parties and other sources. The Commission has also received information about the sale of swaps via a questionnaire that is available on the Commission's website at www.comcom.govt.nz/interest-rate-swaps-2.

Since the investigation, the Commission has received over 140 complaints and contacts concerning the sale of swaps.

What does the Commission intend to do?

The Commission has substantially completed its investigation into the sale of swaps to farmers by ANZ, ASB and Westpac.

The Commission has advised those banks that in its view they may have breached the Fair Trading Act in their sale of swaps and that it intends to place the matter before the Court for determination.

This is only the Commission's view at this stage, based on its investigation to date. These allegations still need to be tested through the Court process, and only the courts can decide if the Act has been breached.

When is the Commission filing proceedings against the banks?

The Commission aims to file Court proceedings in March 2014.

The form the proceedings will take under the Fair Trading Act is still being finalised.

How much have farmers lost as a result of the alleged conduct?

This is not yet clear. We will be seeking further information from the banks to reach a view on the scale of the alleged loss or harm potentially suffered by individual farmers.

My farming business purchased interest rate swaps. Do I need to do anything?

Swap customers who are not already assisting the Commission should contact us if they have information about how swaps were sold to them or what their experience of entering the swap was. You can do this by downloading and completing the Commission's questionnaire on the Commission's website at www.comcom.govt.nz/interest-rate-swaps-2, and returning it to the Commission by email at swaps@comcom.govt.nz or by mail at the Commerce Commission PO Box 2351 Wellington 6140.

If you have already contacted the Commission, then you will be contacted again by us as we take more steps to prepare our case.

My farming business bought an interest rate swap or swaps from one of the named banks. Am I going to get compensation?

The Commission intends to take court action for breaches of the Fair Trading Act. As part of its court action the Commission intends to seek compensation for losses suffered by each affected farmer who chooses to assist in the legal action, but it is too soon to say whether any claim for compensation is going to be successful.

Whether compensation should be given to a farmer, and in what amount, is at the discretion of the court.

How long will it take for an outcome on the case?

The proceedings to be taken by the Commission are likely to be lengthy and any outcome may be some years away.

My farming business purchased a swap from one of the banks identified by the Commission. I am in financial difficulty with the bank. How will these proceedings affect me and what should I do?

If you are concerned about your financial situation you should talk to your bank about your specific circumstances, and take your own legal advice as to what you can do to resolve your situation. You should not wait for the Commission's action to be completed, as we can give no assurance as to what the result will be or when the outcome will be known.

If you wish, you can still also assist the Commission in its proceedings by completing the questionnaire on our website at www.comcom.govt.nz/interest-rate-swaps-2 and sending it in to the Commission either by email at swaps@comcom.govt.nz or by mail at the Commerce Commission PO Box 2351 Wellington 6140.

I have settled a complaint with one of the banks named over the sale of interest rate swaps? Can I still assist the Commission?

You can still assist the Commission in its court action against the banks even if you have reached a settlement over the sale of a swap to you or your business. However, if you have

received some compensation as a result of any settlement then you may not be able to recover further compensation.

I am worried that if I help the Commission in its proceedings there may be repercussions against me or my business by the bank I deal with?

The Commission can require information under statutory notice and, if you are worried about voluntarily assisting the Commission, any information you hold that is relevant to the Commission's intended court action could be compelled from you by use of a statutory notice.

What about swaps sold by other banks?

The Commission is aware of complaints against one other bank in respect of swaps sold to farmers, and is going to be investigating those complaints where we have reason to believe that bank may have engaged in similar alleged conduct. The Commission is not prepared to name that bank at this stage.

If you have concerns about swaps sold to you by banks other than those named by the Commission, then you can contact the Commission by completing a questionnaire which is available on the Commission's website on its Interest Rates Swaps page www.comcom.govt.nz/interest-rate-swaps-2, and returning it to the Commission either by email at swaps@comcom.govt.nz or by mail to the Commission's Contact Centre at the Commerce Commission PO Box 2351 Wellington 6140.

My business purchased swaps but it is not involved in farming. Do you want to hear from me?

The Commission has investigated the marketing and sale of swaps to farmers and its intended action is in relation to the sale of these products to farmers.

We have not investigated the sale of swaps sold to other types of businesses. If you have a complaint about the way swaps were sold to your business, you can make a complaint to your bank and /or to the Commission setting out the basis of your concern.

If you do wish to make a complaint to the Commission then you can complete the questionnaire on the Commission's website on its Interest Rate Swaps page www.comcom.govt.nz/interest-rate-swaps-2 and return it to the Commission by email at swaps@comcom.govt.nz or by mail to the Commission's Contact Centre at the Commerce Commission PO Box 2351 Wellington 6140.