

Interest Rate Swaps investigation: Commerce Commission settlement with ANZ

Questions and Answers as at 3 December 2014

1. What is the settlement for?

The Commission investigated ANZ's, Westpac's and ASB's (**the three banks**) marketing and sale of interest rate swaps (**swaps**) to rural customers between 2005 and 2009. The investigation was conducted under the Fair Trading Act (the **Act**). The Act prohibits misleading and deceptive conduct in trade, including making false or misleading representations.

We commenced our investigation in August 2012 following media articles alleging that some New Zealand banks had mis-sold swaps to rural customers. We primarily considered whether swaps were marketed during this time in ways that may have misled customers as to their true risk, nature, and/or suitability.

2. What are swaps?

A swap is a financial derivative product that allows a borrower to manage the interest rate exposure on their borrowing. It allows a borrower to exchange with another party (for example, a bank) an obligation to pay a floating reference interest rate for an obligation to pay a fixed base interest rate or vice versa.

3. What was the outcome of the Commission's investigation?

On 17 December 2013 we announced that we had completed our investigation into the marketing and sale of swaps by the three banks. We advised the three banks that in our view, we had sufficient foundation for commencing proceedings against the banks in relation to the alleged conduct. We intended to place the matter before the Court for determination, as only the Court can decide if the Act has been breached, and planned to file proceedings in March 2014.

While preparing proceedings, we had discussions with the three banks about our concerns. The discussions with the banks have been continuing since then.

We have now reached a settlement with ANZ. We continue to have discussions with ASB and Westpac.

4. How and why have we settled?

We believe that the agreed settlement is in the public interest and in the interests of our group of eligible complainants (referred to as **named customers** in the Settlement Agreement).

The settlement with ANZ resolves the Commission's concerns regarding ANZ's alleged conduct in two ways:

- ANZ is going to make in-court admissions that some of its conduct in selling the swaps to some customers was misleading. The Commission will seek a High Court declaration that the conduct was misleading
- ANZ is establishing a payment fund of \$18.5m plus interest (**the payment fund**) from which we will ensure that specific customers receive payment.

ANZ will also pay the Commission \$500,000 towards its investigation costs.

The full terms of the settlement are set out in the Settlement Agreement, which you can find at www.comcom.govt.nz/irs-anz-settlement. The details of named customers are confidential and are not contained in the publicly available version of the Settlement Agreement.

5. Which ANZ customers are eligible for a payment offer?

Each eligible customer will receive a letter setting out the named customer's entitlement under the settlement agreement (**payment offer**). Payment offers are being made to the named customers only. The named customers are the 178 current or former ANZ rural customers who agreed to participate in the Commission's investigation and whose details were provided to ANZ before 12 August 2014.

The details of all customers who complained to the Commission will remain confidential.

6. Which ANZ customers are not eligible for a payment offer?

- Non-rural (eg, commercial) ANZ customers or former non-rural ANZ customers
- ANZ rural customers or former ANZ rural customers who did not complain to the Commission, or
- ANZ rural customers or former ANZ rural customers who complained to the Commission but later withdrew the complaint or declined to permit the Commission to disclose their identity to the bank
- ANZ customers or former customers who bought swaps outside the 2005-2009 period.

7. How do I know if I am eligible?

You will be eligible if you (or a family member, trustee, or someone associated with your business) complained to the Commission before 12 August 2014 about your experience with swaps and consented to us disclosing your identity to the bank.

You will receive a letter from us shortly asking you to confirm your contact details by returning a form to us. This is so that Northington Partners (ANZ's agent) can contact you directly with any payment offer. We ask you to send your completed form back to the Commission by **Wednesday, 10 December 2014**.

8. What payments will be made by ANZ?

Payment offers will be made to the named customers. These offers will be calculated according to a payment methodology which will be set out by the Commission and based on confidential conditions contained in the settlement agreement. The methodology will take into account:

- Margins that named customers paid
- Early Termination Amounts paid by named customers when ending or restructuring a swap
- Costs incurred by named customers who did not terminate or restructure their swaps
- The potential difficulties that we might face in establishing customer losses if this matter had proceeded to court, especially with regard to the larger, more financially experienced and better-resourced customers.

ANZ may deduct from the amount to be paid to a named customer the value of any payment, financial benefit or reduced obligation previously provided by ANZ to the named customer in relation to the matters that are the subject of the Commission's investigation. This may result in some customers receiving a reduced payment or no payment. Where this occurs, Northington Partners will write to those customers and explain what the payment would have been and the reason for the deduction.

9. Will anyone who hasn't registered a complaint get any money?

The agreement allows the Commission to direct ANZ to pay amounts to Rural Support Trusts (or similar organisations) for the assistance of the wider rural community.

Any amounts to be paid to the Trusts will be decided by the Commission at the end of the customer-payment process and will depend on the balance of the fund remaining.

10. What is the process for paying me?

Please read the timeline that we have prepared www.comcom.govt.nz/irs-anz-settlement.

Named customers will receive a letter setting out the payment offer from Northington Partners, a financial services firm which is assisting ANZ with the payment process. Please note that you are not likely to receive this letter until early 2015.

Named customers will have 70 working days in which to decide whether to accept the payment, and details of how to do that will be in the Northington Partners letter.

11. How much are the payments?

This information is confidential to each customer, ANZ, the Commission and Northington Partners.

Payment offers will differ for each named customer as they will be based on individual circumstances.

Payment offers will be calculated based on the methodology prescribed by the Commission. It is not a precise calculation of any loss a named customer may have suffered, but rather what we think is a good estimate of losses that may have been recoverable if the matter had gone to court.

12. If I accept a payment offer, how long will it be before I get paid?

Payment to named customers who accept offers must be made by ANZ within 15 working days of acceptance.

13. What action is the Financial Markets Authority taking?

ANZ has reached a separate settlement with the Financial Markets Authority (**FMA**) under which ANZ has made undertakings as to its future conduct. As a result, the FMA has closed its investigation. For more information see www.fma.govt.nz.

14. I have not been in contact with the Commission before but I bought a rural swap from ANZ. I want to be included in the settlement.

Unfortunately you will not be able to participate in the settlement we have reached with ANZ.

On 9 May 2014 we called through the media for any other rural customers who had concerns about the way in which they were sold swaps to contact us by 30 May 2014. We advised that for any rural customers who contacted us after that date, we would do all that we could to include those complaints in our proposed proceedings and ongoing discussions with the banks, but that for those complainants we could not be as confident of obtaining redress.

During the course of our settlement discussions we were required to close off our list of complainants who were able to participate in the ANZ settlement. We closed the list of 'ANZ' complainants on 12 August 2014.

If you still have concerns about your dealings with ANZ over the sale of swaps, you may wish to take legal advice.

15. I previously signed a settlement with ANZ over my swaps. Does this mean that I cannot receive another payment?

That depends on the value of your personal settlement. If you signed a settlement with ANZ you may still receive a "top-up" payment if the amount you received from ANZ under the terms of your personal settlement is **less** than what you are entitled to under the terms of our settlement. If you received **more** under your personal settlement with ANZ than what you would receive under our settlement, then you will not receive any further payment.

16. What are the implications if I accept a payment?

Named customers who wish to accept a payment offer will be required to sign a Customer Acknowledgement Agreement before any money can be paid or credited. This Customer Acknowledgement Agreement waives any legal rights you have against ANZ with respect to your purchase of swaps between 2005 and 2009. It states that the payment to the named customer is in full and final settlement of any claims the customer has against ANZ in relation to the matters that are subject of the investigation.

Named customers should take legal and financial advice as to whether they wish to sign the Customer Acknowledgement Agreement and accept any payment. We cannot give you advice on this.

17. What happens if I don't accept my payment offer?

If you do not wish to accept the payment offer, the money will be retained in the payment fund for distribution.

Money remaining in the fund after all accepted offers have been paid will be used to make a donation to the Rural Support Trusts (or other similar organisation).

18. Will the offer include interest on my losses?

Payment offers will not include interest.

19. Will I have to pay tax on the payment I receive?

That may depend on your individual circumstances. You will need to take your own specialist tax advice on the implications of accepting the offer.

20. What is happening with the other banks the Commission has investigated?

The Commission is continuing to have discussions with ASB and Westpac.