We set out the results of our research into:

(A) Sales - The internal working of Barclays, and for that matter the other high street banks which for present purposes includes Barclays, HSBC, Lloyds and RBS in terms of what we have termed "sales", namely how the banks' staff were incentivised, how profits were allocated between different parts of the banks and how products, particularly Interest Rate Hedging Products (**"IRHPs")**, were produced within banks;

(B) How it worked offshore i.e.in Jersey and we assume Guernsey and the Isle of Man;

(C) The nature of IRHPs and what they are, how they were priced and how much money they made for the banks and for the sales teams and why they were so popular with banks;

(D) Alterations in banking culture between 2000 and 2010;

(E) The credit crisis and LIBOR; how LIBOR is calculated, what LIBOR is and how it has been artificially depressed by Barclays and others;

(F) Common themes in mis-selling; and

(G) Steps that can be taken to obtain redress.

Sources

1.0 In order to provide this report we have drawn upon a great deal of open source documentation, which are available in the public domain, as well as a number of documents which are not in the public domain. We have obtained reports and advice from two firms who provide expert testimony in relation to litigation of this nature. We have also interviewed a number of former bank employees both locally and from the United Kingdom, they had varying lengths of service at various levels. Their attitude ranged from having felt uncomfortable with the banks' culture, leading in all cases to them taking employment elsewhere and to making their own arrangements out of a sense of moral outrage in order to provide former clients with information as to the internal workings of the relevant institutions.

2.0 Whilst the best and simplest pointers came from human intelligence, their accounts were corroborated by documentation and they were all remarkably consistent.

3.0 There are now millions of pages written and publicly available in books, papers and electronic form about the banks, their culture and their attitude to clients. For all of this some of the more fundamental points still seem to have been missed by both the press and the judiciary. In relation to the mis-selling of IRHPs and the artificial depression and dislocation of LIBOR, the whole truth remains in large part occluded.

(A) Sales

4.0 The banks work in a pyramidical fashion with the Bank Managers being effectively the organisations interface with clients, i.e. “the shop front”. All Bank Managers are given annual targets; these were in writing, and adjusted annually. Targets depend upon, *inter alios,* the previous year's performance and the nature of the catchment area, i.e. the number and disposition of the clients within the catchment area.

5.0 When targets are met or exceeded, this results in the payment of significant bonuses as a percentage of basic salary; in some cases more is paid in bonus than in salary. A failure to meet targets was almost universally seen as being a bar to promotion or as a trigger towards redundancy.

6.0 Historically a Bank Manager had done his job if he was lending and borrowing money to clients, that was historically how banks worked. That position has altered appreciably so there are now a number of other products: insurance, pensions, IRHPs and related within a Bank Manager's annual targets.

7.0 From 2004 onwards (Barclays) and from 2006 onwards (Lloyds) the IRHPs became what is termed a tier one product, i.e. Bank Managers had specific targets calculated by reference to revenue generated for the bank by IRHP sales. This in turn resulted in pressure in terms of the size and duration of the IRHPs sold, the larger and longer the hedge the bigger the banks’ profits.

8.0 As mentioned above, Bank Managers were the interface with the bank's client base; they knew the clients sometimes personally, they always had access to the client’s most intimate financial details and they knew *inter alios* the nature of the client’s business, its profitability, strengths and weaknesses. Frequently they knew the entirety of their client’s asset base; details which were available to be shared internally with other divisions within the bank in order to provide profiles to sales teams in order to better effect sales. The clients were sitting ducks.

9.0 No client we have encountered understood what they were buying or the consequences thereof; that is a common theme amongst the entirety of our industry colleagues. No client ever knew the full implication of what they were being sold. The banks defences in nearly all cases revolve around hiding behind standard wording in documentation sent to clients often *post facto*. Offshore clients received fewer, if any, such documentation.

10. In relation to the treasury function, as evidenced inside Barclays and also known as Barcap, this was in effect the manufacturer of the products. Each

bank had what was in effect a research and development department which produced products which were then to be sold to the public. In every case the bank, i.e. Barclays, were the counterparty on the trade so that the client was entering into a transaction with the bank and, consequently the worse the clients deal the better the profits for the bank. It is almost impossible to think of a more incestuous and inappropriate position. In nearly every case the clients trusted their bank and they did not see it as an adversarial position, the banks however did.

11. We deal below with the manner of mis-selling, namely how it was done and common themes as reported by numerous clients. However the important point to note is that the bank only sold their own products so the products were invented and priced by the banks for their own benefit. The mis-selling of IRHPs is now commonly reported, however sales instead of client care were a function of a common culture not limited to IRHPs

12. As one former "salesman" described matters as follows: "*On a weekly basis a rocket scientist came to a sales meeting attended by some 50 sales staff, with a new product to sell to the Bank's client base. Most of us did not understand what the product was or how it worked, let alone its implications. We were given leads by our employer in relation to existing account holders. There was rarely any question of the customers asking for the product, we were product lead*".

13. We deal below in more detail with both pricing and mis-selling but in broad terms IRHPs made massive profits for the banks on their terms. They were ever presented as being protective of the client, i.e. to prevent the client being forced into a situation where it was adversely effected by rises in interest rates but the reality was that they did not do so.

14. Expert testimony in all the cases we have examined confirms that true interest rate protection could be achieved by the sale of an interest rate cap for a fraction of the cost. The banks counter this by saying that a cap requires a significant upfront payment; in no case we have seen did they ever quantify that cost or suggest ways in which it might be financed. The reason being that they would not have made anything other than a nominal profit on such a transaction. In all cases where we have seen costings, the cost of a cap was a fraction of the costs of a hedge and the upfront cost thereof could easily have been amalgamated with those of existing loans.

15. Bank Managers do not have specific skill sets nor are they FCA Conduct of Business Sourcebook “COBS” compliant in relation to certain products, particularly IRHPs.

16. So in effect specialist sales teams were recruited, trained, commissioned and incentivised in order to effect sales of IRHPs which for the reasons we have set out below were peculiarly profitable to the banks.

17. A typical sales person, i.e. an IRHP salesmen or woman, was given a designated area within which he would have access to a number of Bank Managers. Without the Bank Managers and their knowledge of the client base he would not have anybody to sell to; the Bank Managers fed him on her with the intimate details of the client to see who it was possible to hedge and in other cases the bank would simply tell the client that their loan would not be renewed, increased or extended unless they bought one of the bank's IRHPs, Sometimes this was conveyed with a degree of subtlety, in others less so, but the message and the result was universally the same.

18. We deal later on in this report with how profits were generated and calculated but in terms of allocation, the IRHP salesman or woman would have a quota to achieve measured in terms of profit generated. Profits were generated on the sales, taken on the day the deal was struck giving an almost instant allocation to their sales plan targets. The importance of this being that once the sale was made and the profit taken another target had to be found and another sale effected.

19. However there were then other people with the bank to be taken account of including the traders. In relation to the Bank Managers although the profit on a sale would go to Treasury, who after all were the other side of the deal, the contribution of the Bank Manager was recognised by the use of what are known as "wooden dollars" i.e. that sum that was generated would be recognised in some format within his target for the year.

20. All of the above is documented within each bank. Additionally the banks routinely tape recorded internal telephone calls, particularly those with traders. This means that sales planners, salesmen to Bank Manager, emails, salesmen to trader calls and emails can all be obtained upon discovery.

21. In each bank there were IRHP salespersons who masqueraded in various guises. Notoriously within Barclays for example gentlemen called themselves a Corporate Risk Advisors. There was no corporate risk advisory service available; they were salespeople pure and simple.

22. It was put this way by Mr Tim Kerr, QC, in Crestbridge Ltd v National Westminster Bank plc [2014] EWHC 3095 (Ch):

"*For the Banks, I heard oral evidence from Mr Stephen Flack, a relationship manager employed by NatWest, from Mr Nathan Gillard, who at the material time was employed by RBS as an interest rate risk manager responsible for introducing the Banks' derivative products to customers, and arranging interest rate management transactions*."

"*Mr Gillard is a salesman to his bones as well as, then and now, an expert on IRM products. His performance at the meeting was, I am satisfied, polished, as it was when he gave evidence before me*."

23. The pricing of IRHP's was within the sole purview of the bank as vendor and counterparty. In each case that we have seen, leaving on one side the fact

that it was product the client did not need or want, the same product could have been obtained more cheaply from the same vendor. Put simply there was no incentive to price competitively or accurately.

24. Salespeople were not there to advise anybody on the suitability of products and they were simply there to sell them, although they may have claimed differently at the time. Indeed once the deal was done the banks then issued documentation which sought to exclude all liability on their part. "*In sum, the Banks did not provide misleading information. They did provide negligent advice but they successfully excluded any duty not to do so. They did not show themselves worthy of the trust Mr Parker placed in them, but unfortunately for Crestsign, the common law provides it with no remedy because the Banks successfully disclaimed responsibility for the advice they gave on the suitability of the swap which was negligent but not actionable*." As an aside Mr Kerr was never provided with the full picture in relation to the activities of the Banks or on the fixing of LIBOR.

25. As set out above the salesmen were armed with a sales planner and a target for the year and a list of targets from Bank Managers. The sales planner provided a running update on commission generated and the amount of time and therefore money spent per lead. The costs of individual meetings being calculated backwards from the overall target and in some cases the Banks imposed a limit of no less than £5,000.00 generated per meeting. In many cases the information was updated daily and sent electronically back to the salesman's supervisor.

(B) How it worked Offshore

26. Offshore (i.e. Jersey, Guernsey and the Isle of Man) worked in a similar fashion although the local banks tended to be owned or operated by separate companies but within Group ownership.

27. Onshore and offshore sales teams were again only selling their own products. Onshore and offshore Bank Managers were only allowed to introduce clients to their own sales teams and their own products. The offshore branches did not maintain sales teams and did not have suitably skilled staff.

28. From a regulatory perspective as far as IRHP sales were concerned, all of the offshore banks were in breach of all relevant statues and codes of conduct; the presence of salesmen imported from England did not serve to remedy but to exacerbate that fact.

29. The regulatory regimes offshore were in any event loss robust than onshore. Until it was decided that it might confuse clients they were sent “fact finds,” a rudimentary description of the proposed transaction in advance of the transaction setting out at least some details of the proposed transaction. This did not occur offshore. In any event the practise of telling clients about the transaction they were entering into was discontinued as being "too confusing" for the clients, i.e. they might have backed out once they understood what was going on.

30. Onshore regulation (COB 4:19) meant that clients had to be designated as private or intermediate. In the case of intermediate clients the banks were not prohibited for making sales on a non advised basis, i.e. the client had to at least in theory to receive advice as to the risks involved. Clients had also to be told what their designation was and how it affected their statutory protections. Offshore it was simply a question of "*sign here or you do not get your loan"*. In any event immediately the sale was made the client was issued with documentation which enabled the bank to disown responsibility for the advice given.

(C) IRHPs

31. An IRHP is an interest rate hedging product. In practice it is a financial derivative i.e. a betting slip not linked to the client's underlying loans/relationship with their bank. This is a point of some importance as once the sale had been made the IRHP was sold on in the market and the banks did not stand behind their product although they repetitively claimed the exact opposite. For present purposes IRHP means Swap. If the client has borrowed £10M at base, i.e. LIBOR plus for example 2% being the bank's margin, then if interest rates had risen the bank would as a result of the Swap have paid the difference between the rate charged, i.e. base plus margin and a fixed rate, e.g. 5%. If the rate fell then the client paid the bank a fixed rate of interest on top of base, plus margin. This meant that even with LIBOR ostensibly at 1/2% the client was still paying 7½% on the loan.

32. In some cases the banks simply topped up the margin as the client fell into difficulties.

33. As rates fell the clients were left with unsustainable financial obligations which they could not afford to get out of. The mismatch, i.e. the cost of the hedge increasing as LIBOR fell. The more LIBOR fell the more the bank made on the hedge and the more prohibitive the cost of breaking the hedge.

34. In the example above in theory the bank was at risk if for example it could not borrow money to on-lend at 8 ½% or less however in practise once a Swap was in the money the bank terminated it. The clients always lost.

35. Few borrowers managed not to acquire a swap because of the sales techniques and pressure referred to at paragraphs above. Interestingly, none of the experts that we consulted could remember a single recorded instance of a Swap working to the advantage of the client; if they did for a brief period the bank either enforced termination provisions hidden in the small print or pressured the client to take out a fresh hedge.

36. In pricing and profit generation we have the motivation for the activities of the salesmen, namely the longer the hedge the more profits it generated. Equally each time a hedge was sold fresh profits were generated. One salesman reported the following conversation with his superior: "*What do I do now, last*

year I generated £1M in profits, I have hedged every available client that I can lay my hands on?" The answer to which was "*go out and re-hedge them*".

37. This is exactly what has happened to a number of clients that we have spoken to. In some cases clients were lured in with the offer of money back on the old swaps or free re-hedging. In some cases they even had hedges that were temporarily in the money. Banks were so keen to re-hedge and therefore generate more profits for their sales teams that they "*tore up*" the old hedges, i.e. absorbed the losses on what had become for the bank temporarily an unprofitable revenue transaction. Clients were wholly in the dark as to the cost and consequences of tearing up the hedges. In each case clients were issued with further hedges in increased amounts or for longer periods of time. A longer period of time meant a bigger premium and a new additional and larger bonus for the sales team.

38. What the clients were also never told about was what are known as Monte Carlo Simulations. This is a mathematical model which was used in order to calculate the worst case scenario for the client and hence the bank, i.e. where will the client be if he cannot service the loan as hedged and what will the overall liability be, adding in the undisclosed break costs of the hedge to the original debt. The client was not informed that this calculation was being undertaken by the bank. In some cases the effect of the hedge was to place the client in immediate default, particularly relative to those sold in 2008.

39. In our early stages of research in relation to this matter we were perplexed by the fact that, for example where the client had a £10M loan the bank had insisted on £12M worth of security. Clients were perplexed by this and had queried the rationale for this.

40. The reason that the bank was taking additional security without telling its client the reason why was for the purposes of its own solvency and risk calculations, i.e. it had to balance client risk with security. That is to say the risk of the client being unable to perform. The Bank needed to have at least nominal security on its books equivalent to the client's overall potential liability. However the banks were, as a matter of policy, not communicating to the client their overall liability. Had they done so far fewer clients if any would have bought Swaps.

(D) Bank Culture

41. A lot has been said about the culture within the banks. Many books and articles have been written about the culture of greed and it is not necessary for us in this report to say very much more than that they become fixated with their own profits and bonus structures, i.e. the banks were interested for their own profits and not in the long term interests of their clients. As part of our investigation we spoke to a number of what we might term "old fashioned" bankers. They were historically familiar and comfortable with a culture where the client's needs were addressed and then the banker looked to see whether or not he could fulfil those needs. As the noughties progressed that culture fell away in favour of the culture of greed. Internal email traffic within the banks

always reveals the same thing, an emphasis on the amount of money made, back slaps, bonuses and champagne where big deals had been done and not one word as to the wellbeing of the client. [See following links].

http://www.dailymail.co.uk/news/article-2721448/Secret-email-shows-Lloyds-pressures-threatens-staff-sales-just-months-fined-28m-mis-selling.html

http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9852632/RBS-Libor-rigging-emails-Its-just-amazing-how-Libor-fixing-can-make-you-that-much-money-says-trader.-Im-like-a-whores-drawers-adds-another.html
http://www.cnbc.com/id/101062640#.

http://www.theguardian.com/business/2012/dec/19/ubs-libor-rigging-brokers-traders-colluded

http://www.dailymail.co.uk/news/article-2250399/UBS-gets-record-fine-ordered-pay-nearly-1bn-Libor-rigging-scandal.html

http://www.dailymail.co.uk/news/article-2832260/Why-aren-t-crooked-bankers-prison-banks-fined-2bn-fixing-currency-rates-clamour-grows-dozens-traders-face-prosecution.html

(E) The Credit Crisis

42. The credit crisis hit in 2008. At that stage all the major banks had the same problems, namely that they did not have enough money, i.e. liquid cash to deal with the demands upon them for repayment and they were facing difficulties because of their solvency and liquidity calculations. There were four main problems.

43. The first being that they simply did not have enough money. Northern Rock, albeit not quite a bank was an extreme example of this. All banks work on the basis that they are allowed to lend out roughly 90% of what they borrow. It is quite easy for them therefore to achieve a mismatch in terms of cash calls. [See following links].

http://news.bbc.co.uk/1/hi/business/7007076.stm

http://www.theguardian.com/business/2012/aug/07/credit-crunch-boom-bust-timeline

http://www.thisismoney.co.uk/money/news/article-1614033/A-history-of-Northern-Rocks-failure.html

http://www.thisismoney.co.uk/money/news/article-1690604/Northern-Rock-cuts-losses-but-arrears-rise.html

http://www.thisismoney.co.uk/money/news/article-1700602/Good-loss-and-bad-profit-for-Northern-Rock.html http://www.thisismoney.co.uk/money/news/article-1641543/Analysis-The-Northern-Rock-aftermath.html

44. The second problem was that a great deal of bank lending was secured on stocks and portfolios of stocks which then fell significantly in value.

45. The third problem was that businesses and individuals started to go into insolvency as a result of the credit crisis combined with the general uncertainty and falls in the market, this had a significant impact on the banks' Value at Risk calculation ("VaR"), i.e. the value it ascribed to security held and the credit risks they were holding.

46. The fourth problem being that banks had very significant loans secured on property, both commercial and residential. Property prices fell swiftly by about 30% within a very short period again increasing credit risks and preventing redemption so the banks could not get the money back and had to write down the values of security held. See links below.

http://www.bankofengland.co.uk/statistics/Pages/iadb/notesiadb/ltoi.aspx#

http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2013/qb130105.pdf

47. The credit crisis remains with banks being replaced/supplemented in the market by Finance Houses and peer to peer lending. Given that interest rates were and are at an all-time low, this is a state of affairs the reasons for which are not readily apparent but we suspect they are as set out below.

48. LIBOR is defined as the London Inter Bank Offered Rate. Theoretically it is a truthful estimate by lending banks in London as to the rate at which the average lender can borrow if it borrows from another bank of similar strength. It was therefore susceptible to abuse as a result of self-reporting with oversight being provided by the British Bankers Association.

49. As previously observed, Swaps were fixed to LIBOR. The lower LIBOR went the more the Swap cost in terms of revenue and the greater the cost of termination i.e. breaking the hedge. Hedged clients were thus placed in a disastrous position.

50. Most importantly, LIBOR was seen as an indication of bank strength. In financial markets interest rates are an indicator of the strength of the borrower, i.e. liability to repay. Thus if LIBOR is low it denotes strength in the borrower. The banks were desperate to appear solvent.

51. It is now common knowledge that LIBOR was to some extent rigged by the banks, i.e. artificially depressed by agreement. There are many articles in the public domain on this issue, with a particular focus on the fines levied by regulators [see links below]. What remains occluded is how widespread the

practise was and the extent to which LIBOR had become a totally nonsensical figure.

http://www.ft.com/intl/cms/s/0/f0d55584-1640-11e4-93ec-00144feabdc0.html?siteedition=intl#axzz38qetKpBw

http://www.independent.co.uk/news/business/news/lloyds-to-pay-218-million-in-fines-over-libor-rigging-9633818.html

http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10750173/Barclays-settles-Libor-test-case-weeks-ahead-of-trial.html

http://www.filmyboxoffice.com/news/barclays-boss-has-big-job-on-his-hands.html

http://dailyreportage.com/banks_mis_sold_more_than_90pc_rate_swaps_says_fsa_telegraph_p_1130271.html

http://dailyreportage.com/british_banks_paying_billion_for_swaps_mis_selling_ regulator_e_1130271.html

http://www.telegraph.co.uk/finance/rate-swap-scandal/10294960/Banks-face-up-to-10bn-hidden-bill-for-swaps-mis-selling.html

http://www.telegraph.co.uk/finance/rate-swap-scandal/9813576/Rate-swap-scandal-mis-selling-bill-to-top-1.5bn.html

http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9136132/British-banks-hit-by-new-mis-selling-scandal.html

http://www.theguardian.com/business/2013/oct/17/barclays-new-libor-allegations-appeal-court

http://www.lse.co.uk/FinanceNews.asp?code=ty32v011&headline=New_details_of_alleged_Barclays_ratefixing_emerge_in_court_case

http://www.theguardian.com/business/2012/jun/27/barclays-chief-bob-diamond-bonus-fine

http://www.telegraph.co.uk/finance/libor-scandal/10379306/Barclays-faces-new-Libor-rigging-review.html

http://www.bbc.co.uk/news/business-18671255

http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10792944/Former-New-York-based-Barclays-staff-charged-over-Libor-rigging.html

http://www.telegraph.co.uk/finance/libor-scandal/11042476/First-Briton-pleads-guilty-to-Libor-rigging.html http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9852632/RBS-Libor-rigging-emails-Its-just-amazing-how-Libor-fixing-can-make-you-that-much-money-says-trader.-Im-like-a-whores-drawers-adds-another.html

http://www.bloomberg.com/news/2014-02-17/three-ex-barclays-employees-charged-over-libor-rigging-in-london.html

http://www.ft.com/intl/cms/s/0/003cf8c8-5094-11e4-b73e-00144feab7de.html#axzz3KlrMi2XP

http://www.dailymail.co.uk/news/article-2783467/Senior-banker-UK-convicted-rigging-Libor-rate.html

http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9361646/Barclays-Libor-scandal-as-it-happened-June-28-2012.html

http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9368430/Libor-scandal-How-I-manipulated-the-bank-borrowing-rate.html

52. There are a number of public indicators as to the position, namely that LIBOR "*was dislocated from itself*" or put another way "*that LIBOR was the rate at which Banks do not lend to each other*," "*the British Bankers' Association, which compiled Libor, asked for a rate submission but there were no checks*," "*current state of Libor 'untenable'.*" The Libor rate was described as "absolute rubbish" by a Barclay's employee in a conversation with the New York Fed on 24 October 2008.
See the following link.

(http://www.newyorkfed.org/newsevents/news/markets/2012/libor/October_24_2008_transcript.pdf)

53. LIBOR is now widely discredited. A number of countries have terminated LIBOR. Many of the former bankers we spoke to have been sanguine about LIBOR saying that it never did indicate the true cost of borrowing and that everyone in the industry knew that. As one former banker put it in relation to its 2008 onwards manipulation, "*traders were able to predict a point by point fall*".

54. The position of senior bankers at Barclays is well known. They knew what was being done and the inevitable effect of it on their clients. The former Group Chief Executive of Barclays, Robert Diamond, was forced to resign as a direct result of the LIBOR rigging scandal before full details of the Ricardo Fund become public. This was an offshore fund owned by Barclays which benefited directly from LIBOR manipulation. See following links.

https://uk.finance.yahoo.com/news/fresh-details-barclays-alleged-rate-004300736.html

http://www.ft.com/intl/cms/s/0/a4af7524-5e83-11e3-a44c-00144feabdc0.html#axzz3KlrMi2XP http://www.telegraph.co.uk/finance/libor-scandal/10500988/Bob-Diamond-and-former-top-Barclays-executives-called-to-give-evidence-in-Libor-test-case.html

http://www.spyghana.com/former-ceo-bob-diamond-head-court/

http://uk.reuters.com/article/2014/01/31/uk-barclays-libor-court-idUKBREA0U0XB20140131

http://www.bloomberg.com/news/2013-12-06/barclays-fund-gained-on-libor-fixing-u-k-lawsuit-says.html

http://hereisthecity.com/en-gb/2013/12/07/barclays-fund-said-to-gain-from-rate-fixing-bob-diamond-to-testi/

55. What is not yet so well known is that LIBOR was not and is not the claimed 0.5% but considerably higher than that. The true rate of borrowing for the banks can be ascertained on discovery. That is why the banks make so little money available to the public as LIBOR is bogus and they were borrowing at close to 5% that they cannot afford to lend money at less than that without losing significant sums.

56. An indicator as to the true rate of inter bank borrowing is the cost of Credit Default Swaps (**"CDS"**). These are over the counter instruments as they are not traded on an exchange. It is difficult to give figures for the volume but it is estimated in the trillions. In crude terms a CDS is an insurance policy against the cost of, for example, Lloyds or Barclays being unable to repay the loans. It forms part of the costs of borrowing. See following link. This report offers a helpful overview. It addresses the issues raised in CDS, Tier 1 Capital Ratios and the overall health of the Banks.

http://www.bankofengland.co.uk/publications/Documents/fsr/2008/fsrfull0810.pdf

57. Again the numbers, costs and terms of the CDS could be obtained on discovery. More importantly the true cost of borrowing can be worked out by reference to discoverable documents.

58. We remain in a credit crisis, and the banks are reluctant to lend money at base plus 2%/3%, i.e. normal lending margins because they cannot borrow money at that rate from anyone other than the Bank of England. This is because LIBOR has been artificially depressed by such a large margin. This is easily proved by accessing for example Barclays' interest rate book showing who they borrow from and at what rate.

59. Banking Association LIBOR as it was known has been handed to the Intercontinental Exchange Benchmark Association Limited ("ICE"). This was because of the loss of confidence in the British Bankers Association LIBOR. There is an equal absence of confidence in ICE LIBOR, the banks still cannot afford for the world to know the true cost to their borrowing.

60. From the client's point of view, this is almost the final indignity. It was sold a product that did not work by people making money for themselves, linked to a rate that everyone in the industry knew had been falsified for years and which was then further artificially depressed in order to bolster the banks' credibility with the effect of making the Swap more expensive and the cost of breakage totally prohibitive.

61. The judicial view on rigging LIBOR is as follows per The Hon Mr Justice Flaux in *Graiseley Properties Limited and others v Barclays Bank PLC*: [2013 WEHC 67 Comm].

"*If it is the case, as set out in paragraph 32 of the Statement of Facts of the United States Department of Justice, that the derivative traders were well aware of the potential impact of what they were doing to manipulate the rates upon profits and losses under their derivative contracts and the extent to which counter-parties would suffer corresponding adverse financial consequence, as I have already said, it is surely seriously arguable that senior management within Barclays had the same degree and extent of knowledge.*

"What it really would require before the Court could refuse permission to amend on the basis of this objection is that the Court was satisfied that it was simply not arguable that senior management were aware that products were being sold by the bank to customers of the bank which contained references to LIBOR. However, any senior manager who had given the matter a moment's thought would surely have appreciated that customers who were dealing with the bank would assume and would be entitled to assume that LIBOR was being set in accordance with the BBA definition as an independent benchmark and was not being manipulated by Barclays or any other bank for its own personal interest or gain. Accordingly, it seems to me the suggestion that the claimants do not have an arguable case that these representations were obvious to the people within Barclays who are alleged to have been at fault here, is not a suggestion which has any force whatsoever."

62. The banks' response to the credit crisis was once again to plunder the client base and call in cash from every means available giving the client another level of indebtedness as well as leading to the sales of subsidiaries at a loss.

(F) Common themes in mis-selling (see enclosed):

- Clients are not informed even in outline what a swap was – swaps were sold as interest rate protection – it was not.

- Clients not informed that when they received their trade confirms, that such confirmations would contain terms which excluded liability for misrepresentation, i.e. ex post facto they would lose their rights.

- Clients not informed that better and cheaper protection could be obtained at a fraction of the cost by buying a cap.

- Clients not informed of break costs which would make it impossible for them to get out of the hedge.

- Clients not informed that the terms of the swap enabled the banks to step out at will. Clauses enabling the banks to terminate a Swap on an annual basis or if the client defaulted were common. In short it was a one way bet.

- Clients not informed that the banks on-sold Swaps in the market and that they did not have an enduring relationship with the bank as a result of the Swap.

- Clients told that the Swap enabled flexibility and renegotiation, the wording of the Swaps meant exactly the opposite.

- Clients were not told that LIBOR was a bogus figure manipulated by banks for the banks.

- Clients not told that Mr Diamond and others knew perfectly well that Barclays was making a profit out of the artificial depression of LIBOR by his staff at Barclays at the expense of clients;

- Terms of Swap were not matched to terms of loans, mainly short-term borrowings and long term hedges.

63. The banks response to litigation, the threat of litigation and the FCA redress scheme has been to announce ever increasing contingent liabilities in respect of mis-sold IRHPS, whilst publicly denying liability and simultaneously settling claims where they are other than certain of success in court.