

Debate Briefing

The Investigation of Business Banking Fraud

Tuesday 9 October / 16:30 – 18:00 / Westminster Hall



Fair Business Banking

1. Summary

The debate centres around the lack of resources for the investigation of business banking fraud and the perceived unwillingness of the investigative authorities to adequately investigate allegations of fraud against SMEs. The alleged instances of fraud have resulted in severe financial loss for businesses, the bankruptcies of viable and profitable companies and the subsequent loss of revenue to the Treasury.

The investigation into the HBOS Reading fraud shows that criminal convictions for financial fraud are possible with the necessary resources and willingness to investigate. The investigation led to the conviction of six people with a combined sentence of 47 years.

In 2017, annual losses from fraud were indicated to cost the UK economy £190 billion¹. Yet the UK dedicates approximately £10m to the NCA's Economic Crime Command, £50m to the SFO and only £6m to the National Economic Crime Centre. The UK needs better funding structures to adequately investigate business banking fraud. There is currently no cross-country mid-tier fraud investigation resource, similar to counter-terrorism units, which means that 'big ticket' cases of fraud are tackled by the SFO and smaller frauds are tackled by local forces. However, complex, cross-jurisdictional allegations of fraud are expensive and difficult to coordinate and progress.

A reduction in business banking fraud would provide a boost to the UK economy and will provide business owners with the confidence that criminal activity will be challenged and individuals will be held to account.

2. The HBOS Reading Investigation and Convictions

Between 2002 and 2007 many small businesses were transferred to HBOS' impaired assets division based in Reading. Lynden Scourfield, the head of the banks impaired assets division, would require business owners to appoint Quayside Corporate Services (QCS), managed by David Mills and Michael Bancroft. QCS would submit inflated business cases for additional finance and HBOS would extend further funds. QCS would then invoice the company owners for large fees and in exchange, Lynden Scourfield would receive cash, gifts and much more from QCS. Many businesses then had their assets stripped by QCS and were either made bankrupt or sold for nominal amounts to companies linked to QCS.

The bank commissioned its own investigation into this matter and the findings were presented to its senior management in the Project Lord Turnbull Report. The report indicates that the board was well aware of the fraud as early as 2008, and senior managers and directors of both HBOS and Lloyds Banking Group then concealed that knowledge for some 8 years. This conduct appears to have been made worse by the report itself, having been concealed from a number of the bank's directors, including its Chairman.

¹ University of Portsmouth: Annual Fraud Indicator 2017

The Report makes further, and substantive, allegations that Lloyds Banking Group concealed a hole in the accounts of HBOS of nearly £40bn as well as the £1bn fraud. In addition to the analysis within the bank's own report, the APPG has received evidence and statements that specifically refer to the fact that the fraud was not only known about, but was actively concealed, and that this concealment was directed from the head office in Scotland.

Responsibility for investigating the HBOS Reading fraud was passed between many hands. Several police forces and other authorities turned down the case originally. It was only after the tireless campaigning of Paul and Nikki Turner that the case was taken on by the Thames Valley Police (TVP). TVP has a large budget and were willing to take on the case. The investigation cost £7 million but led to the conviction of 6 people with a combined sentence of 47 years.

The APPG believes it should not be the responsibility of individuals to hold those to account for misconduct and fraud. There needs to be greater funding and willingness shown by the investigative authorities to achieve convictions for business banking fraud.

SMEs are particularly vulnerable to fraud by abuse of position which is set out in section 4 of the Fraud Act 2006:

(1) A person is in breach of this section if he-

- (a) Occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
- (b) Dishonestly abuses that position, and
- (c) Intends, by means of the abuse of that position-
 - (i) To make gain for himself or another, or
 - (ii) To cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

3. The Investigation of Business Banking Fraud

3.1 The Financial Conduct Authority (FCA)

The APPG is concerned that the FCA lacks adequate powers to hold organisations to account for their treatment of business customers. The FCA announced on 31 July 2018 that they would take no further action with regard to the investigation into RBS' treatment of business customers in its GRG unit. They stated that it was an unregulated activity and therefore "the FCA's powers to take action in such circumstances, even where the mistreatment of customers has been identified and accepted, are very limited"².

Although the FCA introduced the Senior Managers Certification Regime (SMCR) in 2016, the APPG remains concerned that it does not give the FCA adequate powers to effectively deal with issues of misconduct in commercial lending.

² <https://www.fca.org.uk/publication/corporate/statement-on-fcas-further-investigative-steps-in-relation-to-rbs-grg.pdf>

3.2 The National Crime Agency (NCA)

The NCA has a Department Expenditure Limit (DEL) of £426.8m in 2018³. This budget covers an extremely wide range of crime including economic crime, cyber-crime, organised crime, border policing among many other areas⁴.

The NCA has a specialist economic unit called the Economic Crime Command (ECC) which covers money laundering, international corruption, fraud and counterfeit currency among other economic crimes. The ECC works with partners and stakeholders across the public and private sector. In 2013/14 the ECC had an expenditure of £10,571,000⁵.

The NCA have recently established a National Economic Crime Centre (NECC), which will sit within the NCA, to fight economic crime. It will be staffed from organisations across the law enforcement community including the FCA, HMRC, City of London Police and the private sector. It begins work on 31 October 2018, will be staffed by 55 and has an initial budget of £6m.

The APPG is concerned that the initial budget will simply not be large enough to investigate complex cases of business banking fraud. The HBOS Reading investigations cost Thames Valley Police £7m which is £1m more than the entire budget for the NECC, which also has to balance other operational objectives besides business banking fraud.

3.3 The Serious Fraud Office (SFO)

The SFO is a specialist prosecuting authority tackling the top level of serious or complex fraud, bribery and corruption. They take on a small number of large economic crime cases.

The SFO has a core budget which is supplemented as necessary by additional funding from the Treasury Reserve. This additional funding covers expenditure on any case exceeding £2.5m during the financial year. The core budget is £52,700,000⁶ in 2018-19.

The SFO works closely with the National Crime Agency's Economic Crime Command, City of London Police, Action Fraud and the National Fraud Intelligence Bureau. It also works closely with UK police forces and Regional Organised Crime Units and other organisations such as HMRC and the FCA.

Again, the APPG is concerned that the SFO is inadequately resourced.

3.4 Police Forces

Police forces have shown an unwillingness to take on cases related to business banking fraud. Two police forces chose to not investigate the HBOS Reading fraud, eventually being taken up by the Thames Valley Police, which is one of the most well-resourced forces in the country.

Forces are either unwilling or unable to investigate as it costs them a significant amount of money to investigate. The Thames Valley police only received £2m back from the Home Office after spending £7m investigating the HBOS Reading investigation. Anthony Stansfeld has advocated the Treasury reimburse police forces for the investigation of business banking fraud from fines levied by the FCA.

³ NCA: Annual Plan 2018-19

⁴ <http://www.nationalcrimeagency.gov.uk/about-us>

⁵ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-05-03/36223>

⁶ <https://www.sfo.gov.uk/about-us/>

3.5 City of London Police

The City of London Police have also recently announced that they will be working in partnership with Lloyds Banking Group to tackle economic crime. They have signed a partnership agreement that will see Lloyds provide £1.5m of funding to the City of London Police and will a programme of secondments and exchanges between the two organisations.

The APPG is concerned that this presents a conflict of interest as there are currently other ongoing investigations into Lloyds.

4. Recommendations

The HBOS Reading investigation demonstrates that convictions can be achieved with the necessary resources and willingness to investigate. The case had been turned down by two other police forces and the SFO before eventually being taken up by the Thames Valley Police. The following recommendations must be made to encourage the investigation of business banking fraud.

4.1 Resources to Combat Fraud

The investigation of business banking fraud is a complex and costly process that most individual forces cannot afford. The Government must therefore pay close attention to the resourcing of investigations into complex mid-tier financial fraud. The HBOS Reading investigation cost Thames Valley Police £7m, of which only £2m was recovered from the Home Office. Most Police forces cannot afford to take on cases of this size, so they are sent to Action Fraud in the City of London. Less than 10% of cases sent to Action Fraud are taken further.

Police forces to be properly funded at a regional level by a direct Treasury grant to set up specialised, regional Fraud Units akin to counter terrorism units. These Units can be funded through the fines levied by the FCA, which have averaged nearly £1bn over the past 5 years.

4.2 A Full Public Inquiry

Without the necessary resources and willingness to investigate business banking fraud, a comprehensive, independent and transparent public inquiry is the only way that the allegations of business banking fraud can be aired publicly. The APPG is calling for a full public inquiry into the treatment of small businesses in turnaround units and the insolvency system.

This inquiry would directly address industry-wide issues at the heart of the discourse such as abuse of businesses in turnaround units, the insolvency process and inherent conflicts of interest. These have been highlighted by the draft Project Lord Turnbull Report as well as the Section 166 report into RBS' mistreatment of its small business customers but are not limited to these instances.

4.3 Financial Services Tribunal

Ultimately, business banking fraud occurs because the criminals are aware of the inadequate resourcing of business banking fraud investigations. An independent Financial Services Tribunal would be a method of increasing accountability in the financial industry and changing the culture of the industry to prevent misconduct, and fraud, from occurring in the future.

Furthermore, there is a significant gap in accessing justice for businesses in the UK. Microbusinesses, with fewer than 10 employees and a turnover of less than 2m Euros can go to the Financial Ombudsman Service (FOS) for claims of up to £150,000. All other businesses can only use the civil courts to access justice. However, it requires a huge amount of both time and money to take a case to court and the banks operate a policy of 'unnatural selection', allowing the weak cases to be heard

in court and settling the strong cases outside of court, which ensures that a precedent is not set against the banks.

The establishment of a Financial Services Tribunal would therefore have the dual effect of providing a key backstop for businesses, in the event that a complaint falls outside of the formal remit or expertise of the Financial Ombudsman Service (FOS), and influencing cultural change in the financial industry to prevent misconduct in the future.

For further information on the debate or if you would like assistance in preparing for the debate then please do not hesitate to get in contact.

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An All-Party Parliamentary Group (APPG) is an interest group that occupies a strategic and effective position within Parliament. It is cross-party, with a minimum number of parliamentarians from the Government and the official opposition, and cross-house, made up of both peers and MPs. The APPG on Fair Business Banking is a platform through which businesses, professionals and trade bodies can discuss issues regarding commercial banking and its role in the life cycle of a business, and through which parliamentarians can access information on banking, finance and related issues, including business rescue and insolvency, on behalf of constituents. As a cross-party group, the APPG is an effective vehicle to effect meaningful change via the Parliamentary system. The Group's status is that of an APPG is bound by the rules set out by [The Office of the Parliamentary Commissioner for Standards](#). It does not have charitable status, or official status in the House, nor is it funded by Parliament. It relies wholly on the participation and contribution of parliamentarians, industry members and stakeholders committed to creating a strong platform for business in the UK to thrive. The APPG is co-ordinated and administered via the APPG on Fair Business Banking Secretariat.