



APPG on Fair Business Banking

Position Statement 24.07.2018

Next Steps for the APPG

ACCESS TO JUSTICE

Following the launch of our report into dispute resolution for businesses on 11 July 2018, we must again emphasise our position on the importance of having an appropriate redress ecosystem for businesses.

We recognise that our report, undertaken by the Centre for Policy Studies, is one of a number of pieces of research currently ongoing that are investigating dispute resolution for businesses. The UK Finance review, independently led by Simon Walker, as well as the Treasury Select Committee *SME Finance* inquiry, will both produce important recommendations that must be noted by the FCA and the Treasury. We also look forward to the release of the FCA's report on the consultation into the extension of the FOS.

We do not view these pieces of work as being in competition with our own. In fact, we recognise that the proposals outlined in our report are not positioned as a standalone solution, but that the tribunal system recommended in the report should be a central policy objective of the FCA and the Treasury in creating a sustainable system for dispute resolution. The establishment of a financial services tribunal is a key backstop for businesses, ensuring that should a complaint fall outside of the formal remit or expertise of the Financial Ombudsman Service (FOS), or, indeed, any other proposed private system, there is an accessible mechanism in addition to the courts that is open for complaints. In any system, we will always have those who will wish to operate outside the regulatory perimeter, and it is key that we are able to capture this as part of any holistic solution.

The FCA consultation paper into the extension of the Financial Ombudsman Service recognised that while the extension of the FOS is a means of ensuring access to an ADR mechanism for a larger volume of businesses, a tribunal system is a complementary and equally important part of the equation and would be a primary dispute resolution mechanism.

Furthermore, in the same paper, the FCA outlined various areas that will not be addressed through extending the remit of the FOS and that the FCA as a body do not have the power to address. For instance, Andrew Bailey stated in his oral evidence session to the Treasury

Select Committee on 13th June 2018 that the limits of the regulatory perimeter are 'depressing' in that this restricted scope has had implications on the investigation of key issues such as the RBS Global Restructuring Group (GRG) scandal.

The fact that commercial lending falls outside of the perimeter of the FCA's regulatory powers is clearly an unsatisfactory position for the regulator. Andrew Bailey said in the aforementioned Treasury Select Committee session that the FCA is looking into ways to hook up 'robust industry standards and codes' to the Senior Managers Regime which is itself a whole-firm regime without perimeter restrictions.

The APPG remains concerned that the SMCR does not give the FCA adequate powers to effectively deal with issues of misconduct in commercial lending, nor does it give the FCA the ability to directly impose compensation schemes onto firms in cases of commercial lending.

WIDER RECCOMENDATIONS FOR INDUSTRY

The Section 166 report into *RBS' mistreatment of its SME customers* outlined a number of clear industry recommendations for financial institutions and regulators. These are all points that the APPG has been making for many years now, and we encourage industry, the FCA and parliament to take the necessary steps to address these concerns.

In particular, the S166 report stated:

1. 'We believe that policies and practices for the SME sector need to be based at least in part on an appreciation of differing customer capabilities, if the SME customer is to be treated fairly'.
2. 'Contracts with SMEs for the provision of credit facilities and other services can be markedly more complex than their retail market equivalents.'
3. 'A concern raised by many SME customers in our sample related to the absence of any serious consideration of their complaints. The bank had no regulatory obligations to handle complaints promptly, to investigate them fairly or to consider the root causes of such complaints'.
4. 'At present there are no generally recognised professional standards for turnaround or restructuring units in the UK'. Various guides and codes exist which are seen as relevant such as the Institute for Turnaround's *Statement of Principles for the UK 'Business Support Units' of Banks*. Whilst these 'have been endorsed by several banks... there is little transparency about what banks have done to ensure they meet the principles, and it seems no independent monitoring of compliance with the principles'.
5. 'We encourage the industry and customer groups to develop a code on how banks can best support customers in need of business support. Such a code should be subject to independent oversight and monitoring'.
6. 'We suggest that banks should review how they interact with third-party providers, especially in relation to secondees'.

These comments represent the nature of the treatment of SMEs by the whole financial services industry, not simply the actions of RBS' GRG unit.

We acknowledge that the recommendation to increase access to the Financial Ombudsman Service have been taken forward by the FCA, but it is clear that there are many more areas where work is needed. We also acknowledge and welcome the work by UK Finance in working on internal dispute resolution processes. **We do think that the FCA and parliament need to look at the supervisory requirements for internal dispute resolution processes in line with point 3 above.** RBS's recent announcement outlining their intentions to close their GRG compensation scheme demonstrates the lack of confidence and trust that SME customers have in the effectiveness of internal dispute resolution processes, which can be withdrawn at any moment by financial services institutions.

The APPG on Fair Business Banking is also addressing the significant points made about imbalanced contracts through our Contracts Working Group, led by Momentous Change Ltd in conjunction with UK Finance, Lending Standards Board, Chartered Banker Institute, Federation of Small Businesses and SME Alliance, and **this work will focus on point 2 above.**

The Financial Services Consumer Panel has addressed **point 1**, and we have addressed this point in our report. The report states:

"The Financial Services Consumer Panel has called on the FCA to carry out a segmentation of SMEs, similar to that which it has developed for individual consumers. They should explore the differences between businesses of different sizes, and whether there are specific issues relating to different ways of conducting businesses...decisions on whether a firm is sophisticated cannot be made solely on the basis of figures for turnover or number of employees since it will depend on the type of business...a study which uses both quantitative and qualitative ways of deciding whether a business is sophisticated or not may well be the best way forward"

The other issues identified need to be taken in turn and form a key part of the APPG's work moving forward.

CONFLICT OF INTEREST AND THE ROLE OF PROFESSIONAL ADVISORS

The S166 report refers to key concerns of businesses as to the exact nature of the relationship between financial institutions and professional advisers such as surveyors, insolvency practitioners, lawyers and accountants. The conflicts of interest within these relationships are alarming and can lead to at least a substandard treatment of a business if not worse if not appropriately managed. Our experience clearly leads us to believe that adequate controls are not in place and this has led to financial loss and insolvency of viable businesses.

It is our view that conflicts of interest are too often entrenched within the insolvency framework, and the APPG will be turning to the complex, often overlapping self-regulatory structures of the professions of insolvency, LPA receivership, accountancy and valuations.

Without the cooperation of the aforementioned, the conduct scandals of the last decade could not have happened, and these industries must take responsibility for their members. We will be encouraging regulatory bodies to engage with the APPG, and we will also be focusing on the investigation of financial fraud by the NCA, the SFO and the police, as we must send a clear message to **all** industries that their members will face regulatory and/or criminal action when they step outside the lines of good conduct and/or abuse their position to the detriment of others.

TURNAROUND UNITS AND TREATMENT OF BUSINESSES IN FINANCIAL DISTRESS

We believe that businesses are currently not being treated in a consistent manner when they are in financial distress. **Point 4** above states that there are not recognised professional standards for turnaround or restructuring units in the UK. Furthermore, **point 5** states that industry and consumer groups need to be encouraged to develop a code on how banks can best support their customers in need of business support, **subject to independent oversight and monitoring**. We concur with this position and believe that a comprehensive review of the treatment of businesses in turnaround units must be undertaken to establish clear, enforceable industry guidelines.

INSOLVENCY REFORM

The government *Review of the Corporate Insolvency Framework* in 2016 recognises and addresses many of the key concerns we have with the insolvency regime, and we believe the more rescue led approach to corporate insolvency would be a significant step forward. We encourage the government to press ahead with these reforms, and look forward to contributing to this discussion.

With regard to potential conflict of interest and abuse of power in the insolvency system, we are concerned that there are too many regulators in the sector, and that an industry that holds so much power is self-regulating. We would encourage scrutiny not only of the regulatory structure, but an in-depth investigation into the way in which insolvency has been used as a safe haven for creditor misconduct. The APPG is concerned about the role that IPs have played—and continue to play—in denying access to justice to businesses in the IRHP redress scheme, HBOS Reading, RBS GRG, Dunbar bank's liquidation of its loan book and the sale of debt to unregulated vulture funds by Clydesdale/Yorkshire Bank, to name just a few.

The APPG is compiling a report for BEIS and the Insolvency Service, and will be focusing its attention here in forensic detail in the coming months.

Taken in conjunction with the need for established industry standards for turnaround units, we believe that a full public inquiry is the most effective method to investigate this complex and cross departmental/cross regulatory ecosystem. The treatment of businesses in turnaround units and insolvency has turned into a festering sore, and series of limited investigations is not sufficient. This is wound that needs to be flushed out and investigated properly, so that those who have been denied access to justice have an opportunity to have a voice, and so that confidence can be restored.

THE INVESTIGATION OF FINANCIAL FRAUD

The APPG on Fair Business Banking is also concerned at the perceived unwillingness of the Police, the SFO and the NCA to thoroughly investigate instances of financial fraud which have led to bankruptcies of viable and profitable companies in the UK. The HBOS Reading investigation, which led to the conviction of six people with a combined sentence of 47 years, shows that criminal convictions for financial fraud are possible with the necessary resources and willingness to prosecute and should be seen as an example for future cases of financial fraud. However, we acknowledge that this was a complex and costly process that most individual forces cannot afford, and that we must look at the resourcing of investigation into complex mid-tier financial fraud.

We are concerned that we are not aware of any extensive interviews with the alleged victims of financial fraud. Until such time as we see clear evidence of a thorough investigation, we will continue to publicly press for both individuals and institutions to be investigated, and individual forces to investigate allegations.

We therefore support Anthony Stansfeld, the Police and Crime Commissioner for the Thames Valley, who called for more resources to combat financial fraud. We cannot simply rely on individual victims of financial fraud and the willingness of officials such as Mr Stansfield to raise attention to and investigate instances of financial fraud. Investigations must be financed properly, undertaken by individuals with the necessary knowledge of complex frauds and must be carried out thoroughly. Only then can we hold those who have committed fraud to account and to increase the confidence of business owners that cases of fraud will be investigated thoroughly so they can obtain a fair outcome.

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About the APPG

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.