

KEVIN HOLLINRAKE MP



HOUSE OF COMMONS

LONDON SW1A 0AA

John Glen MP
Economic Secretary
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

23rd October 2018

Dear John,

I have strong concerns that the recommendations contained in today's report from UK Finance on 'Routes for SMEs to Challenge Banks' will not deliver much needed 'access to justice' for SMEs, but merely serve to exacerbate the problems that have led to the current crisis of confidence in the banking system.

More worryingly, they will do nothing to deal with the culture of bad and irresponsible banking that lay at the heart of the Global Financial Crisis and brought so much suffering to business people up and down the country.

In so doing, we echo the comments of the FCA's newly appointed chairman, Charles Randell, reported in a Times interview yesterday entitled "Scars from crash still hurting City regulator". In it, Mr Randell admits that regulators continue to deal with the fallout from the failure to bring criminal prosecutions against senior bankers after the financial crisis. He is quoted as saying: "The fact that bankers didn't go to jail will be a scar that financial regulators continue to carry for a very long time".

The message from this could not be clearer: we need more than "routes for SMEs to challenge banks", we need *genuine routes to justice* that bring wrong-doers to law in public and establish precedent that sets lessons for the future.

The APPG on Fair Business Banking's proposals give individual businesses the ability to fight their corner in an open and transparent legal mechanism.

We welcome the fact that the review has recognised the 'massive power imbalance' between business and banks. However, this solution does very little to bridge the 'access to justice' gap. Around 90% of cases we deal with would fall outside the scope of this redress mechanism as the settlement limit is £600,000. Combined with this is the fact that this extended ombudsman would not have powers of disclosure and could not compel witnesses to give evidence.

We are very concerned that this review has not properly considered the APPG on Fair Business Banking's *Fair Business Banking for All* report. It seems to criticise the tribunal solution, stating for instance that it does not deal with the legal basis for claims when this is actually set out very clearly in the executive summary of our report.



Inexplicably, Mr Walker dismisses the Financial Service Tribunal as simply being 'popular with politicians', when it is also supported by senior members of the legal profession, many banks, the regulator and, most importantly, victims. I wonder how many victims have expressed support and confidence in Mr Walker's proposals? Certainly, none that we have spoken to.

We simply cannot accept that this would provide the holistic dispute resolution scheme that is required to make sure we level the playing field between business and banks and we will continue our campaign until we do deliver the right solution.

We have to see the UK Finance report for what it is: a rear-guard action by the banks' trade body to keep its members insulated from the law. The status quo suits the banks very well. For years they have acted as judge and jury on their own behaviour through redress schemes that even the FCA admits were woefully inadequate. Now we hear proposals for a further extension of FOS to deal with cases of financial and legal complexity way beyond the bounds of what a consumer dispute body can reasonably be expected to deal with.

UK Finance seemingly recognises these shortcomings and attempts to remedy them by layering on 'expert advisory bodies', 'voluntary schemes' for cases beyond FOS's statutory perimeter and, most absurdly, 'a process supported by the banks that seeks reconciliation and closure where they meet SMEs, listen to and acknowledge the loss they experienced and commit to a new system of dispute resolution and other measures to ensure past issues do not infect their future relationship'. This is all impossibly complicated and simply 'more of the same' — procedures via which banks will be able to evade the full scrutiny of the court room and manoeuvre quasi-regulatory bodies such as the Financial Ombudsman towards accommodations that suit *their* ends, and not those of consumers or small businesses.

The shortcomings of the Financial Ombudsman have been well publicised by the media and the Treasury Committee. We held a joint roundtable with the Parliamentary Group on Alternative Lending in July on the proposed extension of FOS's remit to take on complaints from larger SMEs in the wake of banking scandals such as RBS / GRG. Also on the agenda was Richard Lloyd's independent review of FOS malpractices as revealed by Channel 4 'Dispatches' programme.

Our conclusion was that, despite its best endeavours, FOS is not adequately equipped to adjudicate on complex business disputes between well-resourced banks and less powerful SMEs. We are unconvinced there is sufficient expertise and preparedness amongst FOS staff; and nor do we feel its own plans to recruit panels of external experts (essentially what UK Finance is proposing) are sufficient to plug the capability gap, and certainly not before the proposed start date on 1 April.

Our over-arching concern is about the credibility of having a consumer ombudsman service resolve cases which decide the future of businesses which have become involved in banking disputes. It is one thing for a consumer to be content to run a PPI complaint through the FOS 'factory'. It is another to expect a business person whose livelihood is on the line to think that



is acceptable. Such cases can involve detailed and complex points of fact and law. Disputes such as these is what tribunals are designed for.

In particular, they enforce disclosure and calculate consequential losses. Nothing we can see in the UK Finance report addresses these core requirements. In short, the impression left by UK Finance's position is one of hypocrisy; as we know, when the outcome is important to banks, they go to law. But UK Finance, the banks' trade body, seems to be saying that when the outcome is important to SMEs, they don't need access to the law; they should be satisfied with an ombudsman which is already discredited.

As you know, the APPG on Fair Business Banking has held a lengthy inquiry of its own on access to justice for SMEs and concluded that a specialist Financial Services Tribunal should be created to act a *primary* dispute resolution body for complex cases of this nature, in tandem with the courts. There might also be a role for FOS in dealing with some complaints, but it should provide an *alternative* dispute resolution service and let the common law do the heavy lifting in a tribunal. This will improve access to justice and, the long run, help to cure bad banking culture.

Yours ever,

Kevin Hollinrake MP
Co-Chairman, APPG on Fair Business Banking