



The All-Party Parliamentary Group on Fair Business Banking

Letter to Nikhil Rathi, Chief Executive of the FCA - 23/12/20

Subject: Formal Complaint about Lloyds Banking Group under the provisions of the Senior Managers and Certification Regime (SMCR)

Dear Nikhil

As our exhaustive attempts to resolve matters directly with the bank have failed, I hereby submit a formal complaint about Lloyds Banking Group (LBG) under the provisions of the Senior Managers and Certification Regime. SMCR Conduct Rules require senior managers to act with integrity due care, skill and diligence and we believe that there is significant evidence of breaches of conduct, particularly in the following areas:

1. Mistreatment of former LBG employee and 'whistleblower', Sally Masterton

You will be aware that we have made a previous complaint regarding this matter to the FCA (see attached) yet no FCA-led investigation has taken place. Ms Masterton was constructively dismissed and discredited by LBG in 2013 following her work in drawing attention to the HBOS Reading Fraud. After a five-year struggle and a formal complaint to the FCA also under the SMCR, LBG admitted she had been mistreated, apologised and compensated her yet no-one at LBG has been held responsible for her mistreatment. With the CEO and Chair having both now announced their departure, the perception is that to avoid embarrassment action is being delayed until those responsible have left and The FCA's reputation will be further tarnished if it delays justice in this matter.

2. Continued failure to properly compensate and treat fairly the victims of the HBOS Reading Fraud

Following the establishment of the Lloyds Bank Customer Review in 2017 and despite repeated denials by LBG senior executives, the APPG and others, not least the SME Alliance who commissioned a damning QC's report, constantly raised significant concerns about the clear shortcomings of the scheme. This led to the Cranston Review which vindicated the APPG's position, leading to the complete reassessment of all direct and consequential loss (D&C) claims by means of the newly formed Foskett Panel. The LBCR was described as having "serious shortcomings" and "flaws" that "...the methodology and process of the Customer Review did not achieve the purpose of delivering fair and reasonable offers of compensation" and that this amounted to an "unacceptable denial of responsibility".

In his letter to the APPG of 10th December 2019 regarding the re-review, CEO Antonio Horta-Osorio stated that "I have personally committed to oversee that this is done properly and fully." Despite Mr Horta-Osorio's apologies for the past failings and mistreatment and promises to get it right this time, we believe that there are similar ongoing "denials of responsibility" by the bank in the following areas of the new review:

Ex-Gratia payments:

- In an email to the victims in December 2019, Jo Harris, LBG Managing Director, said the bank would make an ex-gratia payment of £35,000 to reflect “the additional delay” resulting from the new review. Despite bank promises for a “swift” re-review, it now appears that some victims will not have their cases heard and adjudicated until the end of 2022.
- The delays have occurred due to the bank’s 10 year denials of fraud, the failure to then implement an appropriate compensation scheme, the recent intransigence over a requirement that victims had to be have been subjected to mistreatment by LBG employees and Quayside and, of course, the Covid crisis. None of these delays are the fault of the victims.
- Considering the initial ex-gratia payment was made in 2017 when it became clear that the bank was going to miss its initial deadline of 6 months, to suggest that a £35k figure paid last year remains appropriate in the current circumstances is grossly unfair and inconsistent.
- The average time for a claim being reviewed in the Griggs Review was 34 days. It is clear that this is a much more thorough process that will take more time to adjudicate and financial support should be commensurate with this.
- The bank has never compensated victims for designing a scheme that could not work and that it bears full responsibility including wasting a further four years of the victims' lives.
- As a result, many will not live to see the scheme resolve their complaints as the bank has, through incompetence or callousness, delayed proper adjudication and financial restitution.
- We have consistently argued for a significantly increased ex-gratia payment of an additional £70,000 to acknowledge and compensate victims for the additional distress and inconvenience caused by the delays to justice at the hands of the bank.

Hardship payments:

- The bank was significantly more supportive with hardship payments for those that needed it during the first review.
- We are aware of only one instance hardship payment that the bank has agreed to make.
- The bank has rejected an application for hardship in the case of one victim who has very serious health problems and needs urgent privately-funded medical treatment.
- The only reason we are here is because LBG, over the entire course of the LBCR, refused to listen to the concerns of victims, SME Alliance and the APPG and implemented a scheme that has been wholly discredited. LBG has a responsibility to continue to support those who need assistance until such time as the reviews are complete.
- The bank is the sole arbiter of value judgements about the victims and whether or not they 'deserve' support. Given its past failures of judgement, this is unacceptable and indicates a clear lack of awareness that the bank itself is wholly responsible for these failures.
- Any requests for hardship should not be in the gift of the bank but must be considered by an independent assessor.

Independent scrutiny of D&I payments and access to the Foskett Panel:

- In the FCA response to the Cranston Review of 10th December 2019 you stated that there were failures by the bank regarding “the exclusion of some customers from the review and inconsistency in the way some customers were treated in respect of claims for distress and inconvenience.” However, LBG remains judge and jury over these matters.
- A number of victims have raised concerns about unfairness and inconsistency of D&I payments.
- On exclusion, we brought to the bank the case of Malcolm Brain, whose business was clearly overseen by Lynden Scourfield. We have asked that he be allowed to have his eligibility independently reviewed in accordance with the recommendations of the FCA. The Bank has refused to do so.
- We believe that anyone who believes they were unfairly excluded or who believes their D&I payment unfair should have the right to have their case reviewed by an independent assessor.

Waivers

- Sir Ross’ report recommended that “Customers choosing a panel assessment must abide by its decision, as must the Bank” and therefore would need to sign another waiver before opting in. However, these recommendations related to victims who had received D&I compensation and had therefore already received some compensation and signed settlement agreements.
- Sir Ross has tacitly acknowledged that he didn’t address victims who received nothing from the LBCR and had thus not already signed a waiver. This included victims who were offered a ‘nil outcome’ or didn’t accept the offer made by the LBCR and those who refused to enter that process.
- We do not believe that it is fair for the bank to insist that these cohorts waive their rights to further action prior to entering a process which is essentially completing the flawed LBCR, when that process itself didn’t have such a condition. Especially as the bank has refused entreaties all year from various stakeholders, including Sir Ross Cranston himself, to let Sir Ross address his oversight. The bank should not be able to benefit from its own failings in the LBCR or from suppressing Sir Ross’s intent and should make special provision for these cases in accordance with natural justice.

The attitude of the bank was described by Sir Ross as 'an unacceptable denial of responsibility' – the APPG believes that this attitude persists in the treatment of customers and its general conduct and its leadership should be held to account for this under the SMCR. A copy of this email and the attachments will be published on the APPG website.

I look forward to hearing from you.

Kind regards

Kevin Hollinrake MP
 Member of Parliament, Thirsk & Malton Constituency
 Co-Chair, APPG on Fair Business Banking
 01347 666880