



**Simon Fell**

Member of Parliament for Barrow & Furness

Nikhil Rathi  
Chief Executive Officer  
Financial Conduct Authority  
12 Endeavour Square  
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Sam Woods  
Chief Executive Officer  
Prudential Regulation Authority  
20 Moorgate  
London EC2R 6DA

16th November 2022

Dear Mr Rathi and Mr Woods

Decision of FCA and PRA not to commence enforcement actions in respect of the collapse of HBOS plc.

I refer to the APPG's letter dated 7 October 2022 to the Regulators and to the Regulators' letter in response dated 27 October 2022. Capitalised terms in this letter are as defined in that prior correspondence, unless otherwise indicated.

As we stated in our letter of 7 October 2022, given the aspects of the failure of HBOS now known to the public, and that the Regulators themselves laid the blame for HBOS's collapse squarely with HBOS's senior management, the Decision appears incongruous.

We appreciate the explanations for the context of the Decision that you have provided, albeit we note you have not provided any substantive information concerning the basis for the Decision itself.

However, the contextual grounds which you have provided to justify the Decision themselves raise concerns. In particular:

1. You note that the regulatory sanctions available to the Regulators are narrow, given the expiry of limitation periods. However, this is the result of the Regulators' own failures to take steps earlier, as criticized by the Green and TSC Reports.
2. Similarly, you refer to the lack of contemporaneous documentation, through the lapse of time, as being a factor in the Decision. Again, this was a result of the Regulators' own delays.
3. You note that the only sanction now available, being the prohibition from performing certain roles within the financial services industry in the future, should be considered judging



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a person's conduct given markets standards at the time, but also based on the risk now of future breaches occurring. In that regard, we observe that:

a. Many will consider that a senior manager should not escape liability simply because they acted consistently with markets standards at the time when those market standards, viewed objectively, are unacceptable. That is especially the case as regards managers at the Chairperson or CEO level, who will have been responsible for establishing those same market standards by their own conduct.

b. You state that a prohibition order "requires a finding that an individual is not fit and proper today i.e. poses a present and future risk to the public today; it is a forward-looking question, not just a backwards-looking assessment". However, as we read section 56 of the Financial Service and Markets Act 2000, there is no such express requirement in the legislation.

c. In any event, the Regulators have a wider duty to promote confidence in financial services. Senior HBOS managers closely associated with its collapse, including its Chairman Lord Stevenson and CEO Andy Hornby, maintain active business careers. We believe that prohibition orders in respect of senior HBOS managers would have promoted confidence, both as a recognition of their past conduct, and also to ensure they do not work in financial services in the future. Conversely, the fact that the Regulators have taken no action sends the message to the public, and to those working in financial services, that those in senior positions are unlikely to be sanctioned for misconduct.

4. You note that the Decision was taken by the EDMC, chaired by Sir William Blair, a former High Court Judge, and the RDC, chaired by Mr Tim Parkes, a very experienced commercial litigation solicitor. Lord Stevenson's links with former Prime Minister Sir Tony Blair, Sir William Blair's brother, have received considerable publicity. Mr Parkes had a long career at Herbert Smith Freehills, a firm of solicitors who have acted for Lloyds, the owner of HBOS, in many banking disputes, including the shareholder claim against Lloyds in connection with its takeover of HBOS upon its collapse. We do not assert that this gives rise to any actual bias. However, we are concerned that the Regulators do not appreciate that, in the eyes of the public, there may be an appearance of bias.

5. You have stated that the process of investigation leading to the Decision cost over £7 million. We are concerned that the Regulators spending this sum only to decide to take no action is not good value for money.

6. As you note, the Senior Managers and Certification Regime ("SM&CR"), introduced in 2016, now provides the Regulators with more extensive enforcement powers. However, those powers are only effective to the extent to which they are used and it was reported that in the first five years of the SM&CR only one individual enforcement action was successfully pursued.



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In light of the above, whilst we appreciate your response, we remain concerned as to the Regulators' handling of HBOS' collapse both in the past, and in the present.

Your sincerely,

Simon Fell MP,  
Co-Chair Elect, APPG on Fair Business Banking

Cc.

Andrew Griffith MP – Economic Secretary to the Treasury  
Treasury Select Committee

Harriet Baldwin MP – Chair, Treasury Select Committee

Rushanara Ali MP – Member, Treasury Select Committee

Anthony Browne MP – Member, Treasury Select Committee

Gareth Davies MP – Member, Treasury Select Committee

Dame Angela Eagle MP – Member, Treasury Select Committee

Emma Hardy MP – Member, Treasury Select Committee

Siobhain McDonagh MP – Member, Treasury Select Committee

Alison Thewliss MP – Member, Treasury Select Committee