

## THE FCA'S LEADERSHIP MUST RESIGN

The speech made by the FCA Chief Executive, Nikhil Rathi<sup>1</sup> last week to the Association of Foreign Banks was packed full of breath-taking hypocrisy. He repeatedly laid claim to the high ground, when in fact the Financial Conduct Authority has plumbed new lows in terms of financial regulation. It is little wonder that the EU is refusing to grant the UK equivalence over financial services. They do not trust us and they are absolutely right not to do so. This is highly damaging for the City of London, which remains the UK's greatest source of invisible earnings and critical to our economy. Trust is vital in financial services and without it, only steady, possibly swift, decline lies ahead. The leadership of the FCA has, for some years now, demonstrated its disregard for due process and the Rule of Law. We cannot afford to have such dishonesty in the oversight of UK financial services and Rathi and the FCA's chairman Charles Randell must resign, if we are to retain any credibility as a country.

In italics, we carry excerpts from Rathi's speech, with our own comments below:

### **1. The FCA's deceitful claim to observe high standards**

*"Our regulation of overseas firms is aimed at achieving the same outcomes as our regulation of domestic firms and ensuring a level playing field. We want to see high standards of conduct and behaviour, with appropriate protection for markets and consumers".*

The FCA's regulation of domestic firms has long been blatantly and often deliberately inadequate, with serious banking fraud systematically covered up, particularly by former CEO Andrew Bailey and chairman Charles Randall. Does Rathi consider that it is only foreign banks, which remain unaware of the FCA's appalling record ?

The following lists some of the FCA's failures to protect markets and consumers:

1. Failure to investigate the detailed allegations in the Turnbull report regarding HBoS / Lloyds' involvement in widespread criminal wrongdoing<sup>2</sup>.
2. Authorising the Griggs review; manipulating and corrupting the Cranston review and establishing the Foskett re-review panel into HBoS Reading, the only major banking fraud which the authorities have allowed to be investigated. These reviews were designed to play for time, avoid taking appropriate action and minimise the compensation paid to victims. The first and most shocking review was specifically approved by FCA chief executive Andrew Bailey, now the Governor of the Bank of England.
3. Failure to penalise Bank of Scotland over the HBoS Reading fraud in a timely manner.

---

<sup>1</sup> See section 30 (page 65) of the Lloyds Omnibus edition of press releases on [www.lloydsbankassetfrauds.com](http://www.lloydsbankassetfrauds.com): "New FCA chief executive – another creature of Government."

<sup>2</sup> <https://www.appgbanking.org.uk/wp-content/uploads/2018/06/draft-Project-Lord-Turnbull-Report-part-1.pdf>

4. Withholding publication of the Promontory section 166 report into RBS' recovery unit, the Global Restructuring Group (GRG), and repeated attempts to prevent the full report being published and the truth revealed.

5. Failure to investigate widespread wrongdoing involving RBS-GRG and Lloyds' Business Support Units (BSUs), while UK Finance & Investments (UKFI) was simultaneously selling taxpayer-owned shares in these banks. The FCA looks to have been complicit in securities fraud.

6. Failure to recommend criminal prosecutions over the manipulation of LIBOR; suspected collusion with Serious Fraud Office (SFO) to end its investigation, two months before FCA CEO Bailey was announced as the next Governor of the Bank of England.

7. Failure over the Interest Rate Hedging Product (IRHP) redress scheme. Despite the FCA calling this out in 2012, victims are still waiting for proper redress nine years later. Bailey appointed the Swift review in 2019, again to play for time.<sup>3</sup>

8. Collusion with National Crime Agency (NCA) & SFO to frustrate investigation of extensive bank signature & document forgery. In the US, such actions were condemned as major criminal fraud. In the UK, we prefer to cover them up. This is deeply and unmistakably corrupt.

9. Long-standing failure adequately to investigate the Connaught fraud, despite numerous debates in Parliament. Deliberate disregard of high profile whistle-blower and refusal to accept evidence.

10. Failure to respond to numerous red flags over London Capital & Finance. Bailey's conduct singled out for criticism by Judge Dame Elizabeth Gloster.

11. Other FCA scandals have included Woodford, Premier FX, Lendy, Blackmore Bond, Aramco and Park First.

12. The FCA has repeatedly ignored, jeopardised and acted inappropriately in relation to whistle-blowers. Former CEO Bailey refused to meet whistle-blowers and accept their evidence.

## **2. The pretence that the FCA's standards are internationally superior**

*"Where we can't be confident in the co-operation with our colleagues in other regulators, I think it is natural that we would be less confident in our ability to defer to them and less willing to do so."*

*"International firms that pose more risk to consumers, clients and markets can expect proportionately closer scrutiny."*

A US Treasury official recently referred to the UK as a "high-risk jurisdiction", meaning that our regulatory and prosecutorial standards have fallen so low that the UK can no longer be trusted. Britain's prosecution of serious fraud has become notoriously inadequate by international standards. The UK remains awash with illicit laundered money and boasts a full-service regime complete with corrupt legal professionals and company registration agents. There is an obvious list of essential

---

<sup>3</sup> See section 8 (pages 11-12) of "Challenging the Bailey Appointment" on [www.lloydsbankassetfrauds.com](http://www.lloydsbankassetfrauds.com).

reforms<sup>4</sup> but Government and Establishment have shown no interest in seeing these implemented. Meanwhile, RBS and Lloyds rank first and third respectively in a table of fines paid by the world's leading banks for serious misconduct<sup>5</sup> - and that is with the authorities refusing to investigate numerous other instances of major wrongdoing.

*“Our approach will be guided first and foremost by our continued commitment to high, internationally consistent standards and proportionate regulation.”*

In 2016, Bailey took over as Chief Executive of the FCA in order to keep the lid tightly sealed on serious banking fraud and the misappropriation of business customers' assets by major UK banks for the benefit of their own balance sheets. In 2018, he was joined by the current chairman, Charles Randell and together they have been responsible for a sharp fall in regulatory standards in the UK. Bailey's focus has always been to preserve the banking system at all costs, regardless of the consequences for victims of covering up serious banking fraud and other misconduct, or the Rule of Law.

### **3. Financial crime – FCA's claims deliberately misleading**

*“Another global challenge we are facing is tackling financial crime and money laundering. Financial crime ...(causes) incalculable damage to society and is often carried out across borders. We endeavour to monitor entry, devise controls and erect barriers powerful enough to stop criminals from causing further harm.”*

The former Police & Crime Commissioner for Thames Valley, Anthony Stansfeld described the wholesale failure of the authorities to tackle financial crime in his paper “High-Level Fraud”<sup>6</sup>. The FCA has been joined by the Financial Ombudsman Service (FOS), NCA and SFO in their dereliction of duty over these issues. Together with the SFO, the FCA has co-operated with the NCA in the latter's refusal to investigate properly the systematic forgery of signatures and legal documentation by banks.

The FCA has consistently declined to investigate the HBos Reading fraud, made virtually no use of its prosecutorial powers and when unable to act, the regulator has rarely referred matters to the Police, which anyway appears to have been instructed at a high level not to investigate banking fraud.

*“Ensuring firms have adequate financial crime controls continues to be a key priority area for the FCA across the banking sector”.*

The emphasis is always placed publicly on fraud conducted by outside parties. Meanwhile, extensive fraud conducted by banks, their solicitors, barristers and LPA receivers has been comprehensively covered up. Especially under Bailey and Randell, the FCA has played a leading role in the cover up of serious banking fraud.

---

<sup>4</sup> See “Suggested reforms – we cannot continue like this”, Lloyds Omnibus edition of press releases, pages 89-92 on [www.lloydsbankassetfrauds.com](http://www.lloydsbankassetfrauds.com).

<sup>5</sup> The CBR Conduct Costs Project, Business School (formerly CASS), University of London – August 2020. <https://www.cass.city.ac.uk/faculties-and-research/centres/cbr/research/conduct-costs-project>.

<sup>6</sup> See [www.lloydsbankassetfrauds.com](http://www.lloydsbankassetfrauds.com) left-hand icon on second row for latest version of this paper.

#### 4. FCA Principles, regulatory perimeter & ESG – further intentional failings

*“We’ll make more agile use of our Principles<sup>7</sup> – particularly the requirement to treat customers fairly – so that we can respond to issues as they arise with firms who are not doing the right thing”.*

The failure of the FCA to apply its **Principles** to business lending has been notorious. Only three of the eleven Principles are currently applied to commercial lending, which remains unregulated because the banks want to keep it that way. There continues to be no requirement for banks in relation to their business customers, for example, to conduct their business with integrity, observe proper standards of market conduct, pay due regard to the interests of customers and treat them fairly, and no duty of care. It remains the Wild West and the FCA has allowed it to be so.

*“We want to be as open and clear as possible in explaining our perspective, our approach and the outcomes we are working towards.”*

Under CEO Bailey, the FCA’s approach was the exact opposite. The regulator consistently used opaque interpretation of its **regulatory perimeter** to avoid taking meaningful action over numerous issues. When the Treasury Select Committee suggested that its regulatory perimeter should be widened, Bailey and HM Treasury ensured that it was not. Bailey has regularly lied and obfuscated before the Treasury Select Committee, knowing there was no penalty for doing so.

*“Other key areas of focus in international regulation include ESG and the sustainability agenda and dealing with financial crime”.*

**Environmental, Social & Governance (ESG)** guidelines are increasingly popular in directing global investment flows along ethical lines. However, the FCA has waived oversight of Governance in relation to the major banks. The new chairman of Lloyds is an acknowledged expert in governance<sup>8</sup> and yet, he is continuing to cover up systemic banking fraud undertaken by his bank.

#### 5. FCA Chairman Randell – contempt for due process

Several attempts by Government and regulators to clamp down further on due process began last summer. They may have been co-ordinated.

1. In July 2020, the **Justice Secretary**, Robert Buckland announced plans to restrict the use of judicial reviews and last autumn, went on to defend the Government potentially breaking international law over the Northern Ireland protocol. Last month, an independent panel recommended no change largely in the system of judicial reviews but undaunted, the Justice Secretary immediately announced a further “consultation”, with a deliberately inadequate six-week window for submissions.
2. In the same month, the **Solicitors Regulation Authority (SRA)** announced plans to restrict claims by victims, who have suffered dishonesty at the hands of solicitors from £2mn to £500,000. Thankfully, on 21<sup>st</sup> April, the chief executive of the Legal Services Board issued a

---

<sup>7</sup> See table in Treasury Select Committee report on SME Finance, pages 23-24.

<sup>8</sup> <https://www.thecrownestate.co.uk/en-gb/our-business/our-people/the-board/robin-budenberg/>

warning notice<sup>9</sup> to the SRA, strongly opposing the proposed changes.

3. As highlighted by the True & Fair Campaign<sup>10</sup>, the **FCA chaired by Randell** introduced proposals to limit compensation payable for its own regulatory failure in its “Approach to Remedies” (June 2020). These were completely at odds with the Financial Services Act 2012 and the updated Complaints Scheme (March 2016) and would require claimants to evidence that they have “suffered a quantifiable loss caused solely or primarily by the actions or inaction of the FCA”, when in fact, losses have nearly always resulted from the claimant’s interaction with third parties. The FCA suggested that compensation should be limited to £100-£300 or an apology, both of which would be derisory, when statute had previously specified that there should be no ceiling to compensation. These recommendations were published one month before the FCA’s foreshortened consultation period had even opened. The improper changes attempted by the Justice Secretary and the SRA have been roundly condemned by those who still respect due process and the Rule of Law, and the FCA’s underhand moves must likewise be called out widely, for the regulator is attempting to close the door on its catalogue of failures, by introducing wholly unjust changes through the backdoor without proper scrutiny or challenge.

#### **6. Transformation of the FCA – another sham, just like 2013**

*Rathi concluded his speech with “an update on our transformation agenda and the work we’re doing to better equip the FCA for the challenges of the future”.*

The supposed transformation of the Financial Services Authority (FSA) into the FCA in 2013 was, in many respects, a complete sham and the appointments of Bailey as CEO in 2016 and Randell as Chairman in 2018 to keep the lid on serious banking fraud were an outright disgrace. Now, the FCA claims that it will transform itself. Last November, one of Rathi’s early moves was to appoint Megan Butler<sup>11</sup>, the FCA’s director of supervision, as the regulator’s director of transformation, with her failures of supervision in relation to the London Capital & Finance (LCF) scandal conveniently dismissed and ignored.

#### **CONCLUSION - Rathi and Randell must resign**

**The UK cannot afford to have deceitful individuals placed in the most important positions of authority. Rathi has been in post for only eight months but has already shown himself to be just another creature of Government. His speech last week was the embodiment of hypocrisy. Either we continue to tolerate this and the UK’s reputation in financial services steadily declines, or we comprehensively address all the high level wrongdoing. Rathi, Randell and a number of other senior figures must now resign and Britain must clean up.**

**There really is no alternative, if we wish to retain any credibility as a country.**

---

<sup>9</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/04/20210407-SRA-Warning-notice.pdf>

<sup>10</sup> <https://trueandfaircampaign.com/wp-content/uploads/2021/04/Open-Letter-to-Mr-Randell-FCA-From-The-True-and-Fair-Campaign-27-April-2021-1.pdf>

<sup>11</sup> <https://www.ftadviser.com/regulation/2021/03/02/mps-question-butler-appointment-amid-lcf-failings/>