

THE MOST SERIOUS FINANCIAL SCANDAL OF MODERN TIMES**24. FCA's DELIBERATE FAILURE OVER BANKING FRAUD**

The failure of the financial regulator, the FCA to investigate banking fraud has been long-standing and deliberate. For years, commercial lending has been left unregulated and intentionally unprotected. The regulator's rule book is detailed and extensive but has largely not been applied to the banks in cases of serious professional misconduct and criminal fraud. The FCA can act as it wishes and its reform in 2013, in this context, was a sham. The FCA is definitely not independent from Government, as has been claimed¹ and its failure adequately to investigate and prosecute banking fraud has been at the request of Government. This is further described in our next press release, which covers the period when Andrew Bailey was the FCA's Chief Executive (July 2016 – March 2020).

FCA – reformed ?

The Financial Conduct Authority (FCA) was supposed to represent an improved version of its predecessor, the Financial Services Authority (FSA). However, in April 2013, Chancellor Osborne appointed as chairman of the new regulator, the former senior partner of KPMG (UK), John Griffith-Jones. KPMG were the auditors of HBoS and signed off loan loss provisions of £370m prior to the rights issue in May 2008, when subsequently, HBoS was found to have a £40bn hole in its accounts.² In his capacity as senior partner of KPMG, Griffith-Jones attended the FSA meeting, which set the terms of reference for the financial regulator's enquiry into the collapse of HBoS. The minutes of the meeting show that the regulator decided that the investigation would not encompass the conduct of the bank's auditors, KPMG or the role of accounting standards.

The cosy culture of not challenging a company's management outside the specific remit of the audit for fear of committing commercial suicide has been echoed by the reluctance of the British press and media to hold the banks adequately to account for fear of losing critically important advertising. In both instances, it has enabled serious wrongdoing to flourish unchallenged. The Chancellor's appointment of the chairman of the UK's supposedly reformed, highest financial regulator set the worst possible example from the outset. The Parliamentary Commission into banking standards, which was announced in July 2012, was also, in certain key respects, an illusion.

Commercial lending left unregulated - FCA's "Principles of Business"³ largely do not apply to banks

Successive Governments have ensured that commercial lending remained unregulated and legislation long devised to favour the banks at the expense of business customers.

¹ See footnote 7 at foot of next page.

² <https://www.ianfraser.org/paul-moore-why-john-griffith-jones-must-go/>

³ See table in Treasury Select Committee report into SME finance, Oct. 2018, pages 23 – 24
<https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/805/805.pdf>

Regulators, led by the FSA / FCA, have worked closely with HM Treasury and have ensured that eight out of eleven of their “Principles of Business” do not apply to businesses, leaving them without even the most basic protections, which they might reasonably expect. These include a duty of care, the requirement for banks to conduct their business with integrity and to observe proper standards of market conduct. While the failure is astonishing, it has also been deliberate.

Enforcement guide not applied to banks

The regulator has detailed and extensive regulations for other financial businesses contained in its Enforcement Guide, which extends to 137 pages⁴. However, it has intentionally chosen at the direction of HM Treasury in large part not to apply these to the banks. The latter have responded in different ways but Lloyds has taken full advantage of and exploited what effectively has amounted to a criminals’ charter and when their activity, or that of their professional agents, has been criminal, the authorities have turned a blind eye, helped to cover up and refused to investigate or prosecute.

FCA can act as it chooses

The supposedly reformed Financial Conduct Authority might have been expected to promote the highest standards of conduct across the UK’s financial sector. However, as described in “Our Mission” in 2017, the FCA’s remit was designed from the outset in a very different and unexpected way, which essentially enables the UK’s highest financial regulator to act in whatever way it chooses⁵:

“The FCA serves the public interest through the objectives (protecting consumers, integrity and promoting competition) given to us by Parliament. They are the basis on which we are held to account. To deliver our objectives, Parliament has given us a range of tools. It has also given us independent powers to make decisions about how best we should use these tools. We can use them to serve the public interest in different ways but we must be targeted when we decide where and how we act”.

FCA – not independent from Government

Ministers have always claimed that the FCA operates independently from Government⁶ but in practice, this is completely untrue. When its first Chief Executive Martin Wheatley was deemed too hostile towards the banks,⁷ Chancellor Osborne replaced him in July 2016 with Andrew Bailey, the chief executive of the Prudential Regulation Authority (PRA). He did so, famously “without interview”, because he knew that Bailey was the ultimate Government insider and could be relied upon entirely to follow the line required by Government and HM Treasury.⁸ The ultimate sanction, which the FCA possesses, is to launch a section 166 review under FSMA 2000 but Osborne made sure, under the Financial Services Act 2012, that HM Treasury retained ultimate control over section 166 reviews, a power which Chancellor Hammond subsequently refused to relinquish.

⁴ https://www.handbook.fca.org.uk/handbook/document/EG_Full_20140401.pdf

⁵ <https://www.fca.org.uk/publication/corporate/our-mission-2017.pdf> - page 3.

⁶ Economic Secretary to HM Treasury, Harriet Baldwin MP, FCA backbench debate, February 2016: “The FCA is of course operationally independent of the Government....I firmly believe in the independence of the FCA”.

⁷ <https://www.economist.com/britain/2015/07/17/britains-bank-basher-in-chief-is-toppled>

⁸ <https://www.thisismoney.co.uk/money/news/article-3546335/Andrew-Bailey-handed-job-FCA-without-interview-Questions-raised-political-influence-independent-body.html>