

THE MOST SERIOUS FINANCIAL SCANDAL OF MODERN TIMES

34. SUGGESTED REFORMS (PART TWO) – WE CANNOT CONTINUE LIKE THIS

New regulator required - The Controller for Banking

It is not just that in respect of banking, the existing regulators, the Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS) have failed. **They have failed deliberately.** Fines imposed for wrongdoing, which are effectively paid by shareholders, are often regarded as “a cost of doing business”. There is no accountability and as a result, serious professional misconduct and criminal fraud have flourished at banks such as Lloyds Banking Group and Royal Bank of Scotland.

- There needs to be a new regulator, **the Controller for Banking**, which is truly independent of Government and run by qualified bankers. Its main purpose would be to instil order and discipline to the UK banking sector. The Chairmen, senior management and boards of banking groups and financial services firms would be answerable to the new regulator and carry personal liability for their failure and wrongful conduct. They could be rendered liable to prosecution and imprisonment.
- The Controller for Banking would be assisted by another new **Professional Complaints regulator**, which would cover banks and all financial services firms. Victims of a bank's reckless behaviour and criminal wrongdoing would be able to be compensated fully, without the need for litigation. The independent regulator would be responsible for policing such matters, with input as required from the Serious Fraud Office (SFO), National Crime Agency (NCA) and the Police.
- To bring about essential change, existing legislation would require extensive amendment¹, notably FSMA 2000, the Data Protection Act 2018 and Employment Law.

Other Reforms

- There should be a much clearer distinction between regulators, prosecutors and those institutions over which they regulate and exert authority. The present system, whereby senior FCA / SFO staff can resign and transfer to the private sector after only six months is unacceptable and has brought the regulatory and prosecutorial regimes into disrepute. A minimum gap of one year should be instituted, or two or more years in the case of staff transferring to a bank. Pay rates should be increased to reduce the incentive to move.
- As recommended in December 2018, the Financial Reporting Council (FRC) should be replaced by the Audit, Reporting and Governance Authority (ARGA). This new body should be staffed by independent professionals, who have no connection with the firms they are investigating.

¹ FSMA 2000; Data Protection Act 2018; Employment Law; Employment Rights Act 1996; SM&CR rewrite; Fraud Act 2006; Bribery Act 2010; Prevention of Money Laundering Act 2002; Companies Act 2006; The Small Business Enterprise and Employment Act 2015; Insolvency Act 1986; The Insolvency (E&W) Rules 2016.

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Press contact: info@lloydsbankassetfrauds.com

- Self-regulation by professional bodies such as the Solicitors Regulation Authority (SRA), Institute of Chartered Accountants of England & Wales (ICAEW) and Royal Institution of Chartered Surveyors (RICS) has not functioned correctly and has actively discriminated against or ignored legitimate complaints. External bodies should be established to review and rule on complaints and the failure of their regulatory functions, which looks to have been deliberate, should be investigated. These professions should command public trust, not put it at risk.
- In respect of Lloyds Banking Group and Royal Bank of Scotland, there should be criminal investigations launched into the activities of their recovery units. The long-standing refusal of Avon & Somerset Police to investigate the wrongdoing and fraud undertaken by Lloyds Recoveries, Bristol and the Lloyds-associated secondary lender, UK Acorn Finance has become notorious and requires in-depth investigation by another authority. The extent of these frauds may be unprecedented.
- An un-redacted version of the Bevan Brittan LLP report into Burges Salmon, Bristol should be made public and the failure of the Solicitors Regulation Authority (SRA) to hold to account certain fraudulent solicitors, who are continuing to act or have acted for banks, should be investigated, with a view to prosecutions where appropriate.
- Firms of solicitors should be held jointly and severally liable for their partners' actions and the status of limited liability partnership (LLP) should not stand, in the event of criminal fraud or other criminal conduct being proven.

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