THE MOST SERIOUS FINANCIAL SCANDAL OF MODERN TIMES

25. ANDREW BAILEY'S KEY ROLE IN FCA FAILURES OVER BANKING FRAUD[1]

During Mr Bailey's tenure as Chief Executive of the FCA (July 2016 – March 2020), a number of significant failings occurred. There is evidence that in conjunction with other authorities, he declined or delayed investigations and failed to prosecute serious wrongdoing and criminal fraud undertaken by banks, especially Lloyds Banking Group and Royal Bank of Scotland. He frequently claimed that the matter raised was somehow outside the regulatory perimeter of the FCA but when the Treasury Select Committee last year recommended that the perimeter should be widened, [2] the FCA and HM Treasury made sure that it was not. [3] This raises the question of whether Mr Bailey deliberately sought to turn a blind eye to serious criminality and abdicated the FCA's regulatory responsibilities by failing to take meaningful regulatory or enforcement action against such banks, thereby allowing them to remain above the law.

Never before has the Governor of the Bank of England had such a questionable prior record.

Summary of Mr Bailey's failures at the FCA

Lloyds / HBoS

- Failure to investigate the detailed allegations contained in the Project Lord Turnbull report and the numerous offences it described. [4] These allegations were criminal as defined by FSMA 2000, the Companies Act 2006, the Proceeds of Crime Act 2002 and the Money Laundering regulations 2003 & 2007.

- Failure to prevent Lloyds Banking Group from establishing three wholly unnecessary reviews regarding the Halifax Bank of Scotland (HBoS) Reading fraud, thereby depriving victims of the fraud of swift and adequate compensation. [5]

- Failure to penalise the Bank of Scotland in relation to the HBoS Reading fraud in a timely manner. [6] It was fined at least twelve years after the events in question.

- Failure to investigate or recommend criminal prosecution of widespread serious wrongdoing by Lloyds Banking Group, including its Business Support and recovery units. [7]

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[1] See "Challenging the Bailey Appointment", February 2020, 12 pages for more details.
[2] https://www.finance-disputes.co.uk/2019/08/treasury-committee-calls-for-expansion-of-fca-powers/
[3] https://lexlaw.co.uk/solicitors-london/fca-letter-powers-regulatory-perimeter-treasury-london-litigation-solicitors/
[4] http://www.appgbanking.org.uk/wp-content/uploads/2019/05/Lord-Turnbull-DRAFT09012014-docx.pdf
[5] Press release 10.
[6] https://www.ft.com/content/548c3c50-93ff-11e9-aea1-2b1d33ac3271

- Failure to investigate serious fraud at Lloyds and RBS during periods of time in which their shares were being sold by the Government. This may have contributed to a form of securities fraud because institutional purchasers of these shares were not provided with full and sufficient information, as required by FSMA 2000, sections 85 & 87. [8]

- Failure, with the National Crime Agency and Serious Fraud Office, to allow prompt investigation into the alleged systemic forgery of signatures by Lloyds Banking Group. [9]

RBS - GRG

In November 2013, the Tomlinson report first highlighted the serious mistreatment of SMEs by RBS' Global Restructuring Group (GRG) and two months later, the FCA appointed Promontory to undertake a Section 166 investigation. However, the FCA restricted that firm's ability to ascertain the full facts and scale of the wrongdoing by defining the study's remit and methodology from the outset. The FCA refused eight times to publish the Section 166 report, with Mr Bailey refusing the request of the Treasury Select Committee in September 2017, a move which appeared to frustrate transparency and assist the concealment of wrongdoing. [10] In July 2018, Mr Bailey finally disclosed that the FCA's powers to take action against RBS-GRG were "very limited" because its business was largely unregulated. However, the FCA had received the Tomlinson report nearly five years earlier and could have arrived at such a conclusion within weeks. Instead, the regulator deliberately did not do so and Mr Bailey played a leading role in these delays.

Some of Mr Bailey's other failures

- Failure to recommend criminal prosecutions regarding the manipulation of the London Inter-Bank Offered Rate (**LIBOR**). [11]
- Failures in relation to the implementation and oversight of the Interest Rate Hedging Product (**IRHP**) review and redress scheme. [12] Again, justice has been intentionally delayed.
- **Complicity with hidden credit lines:** When customers were sold swaps and fixed rate loans, banks put these in place to cover the losses they expected their customers to make, whilst lying that the swaps would protect them from rising interest rates (which the banks never expected to rise long term). These credit lines which covered contingent liabilities (expected losses to the customer and gains to the bank) expanded exponentially, when interest rates dropped and often breached Loan to Value covenants (without the customers' knowledge), pushing people into support units like Lloyds BSU or RBS-GRG and forcing many into administrations and insolvencies. The banks often, at this point, asset stripped their own customers, via the use of 'tame' insolvency practitioners and RICS valuers, often seconded and based in house alongside the bankers and also in the case of RBS, supported by illicit insurance schemes such as the Asset Protection Scheme (APS).

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[7] Press release 19.
[8] Press release 7.
[9] Press release 15.
[10] https://www.moneymarketing.co.uk/news/fca-refuses-publish-report-rbs-mistreatment-claims/
[11] Challenging the Bailey Appointment, February 2020, pages 10 - 11.
[12] Challenging the Bailey Appointment, February 2020, pages 11 - 12.