

UK lawmakers seek major change to banks' historic redress scheme, arbitration tribunal only credible option

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MPs have ordered the lobby group for UK banks back to the drawing board over its proposal for a redress scheme to deal with historic cases of mis-selling to small and medium enterprises (SMEs) by their lenders.

Andrew Bailey, chief executive of the Financial Conduct Authority, has also lent his support to the MPs' proposed alternative solution for a backward-looking dispute resolution scheme (DRS), a financial arbitration tribunal.

"It seems like a sensible idea to explore," Bailey told Thomson Reuters Regulatory Intelligence.

In a strongly worded letter to Stephen Jones, chief executive of UK Finance, Kevin Hollinrake, co-chair of the All Party Parliamentary Group on Fair Banking (APPGFB) said he could not back the current proposals for the composition of a steering group which would oversee the setting up of the historic DRS.

The Democratic Unionist Party (DUP), on whom the minority Conservative UK government relies for a parliamentary majority, supports the change in composition of the steering group and is "committed to driving a solution for historic cases over the line".

Sammy Wilson, DUP MP for East Antrim, is a vice chair of the APPGFB.

"The position now is that we need to take a further step forward, following the chancellor's (Philip Hammond) letter of January 19, together with support from across the chamber to have MPs, led by the APPG Fair Business Banking, be a leading and proactive part in moving forward with the DRS Steering Committee in developing two credible complaint/redress schemes. In particular, the victims' involvement in the process is something we all recognise is central in a medium, and long term, solution," said a DUP spokesman.

UK Finance said it would consult with the SME Alliance, an action group for victims of financial mis-conduct. Nicky Turner, a director at SME Alliance, was not invited to the first meeting of the steering group for the DRS, which took place January 29.

UK Finance said the composition of the steering group was a matter for the independent chair of group, Lewis Shand-Smith.

Hollinrake said the composition of the steering group appeared to be dictated by UK Finance.

Hollinrake suggested to Jones that Turner be invited to join the steering committee as well as APPGFB's executive director for policy and strategy, Heather Buchanan and Jim Shannon, DUP MP for Strangford. He also questioned the presence of the Confederation of British Industry (CBI) on the steering group.

"As the CBI has financial institutions as its members, we see them a body representative of industry," Hollinrake said in the letter dated January 31.

Shand-Smith said he was totally committed to ensuring banks and business had an equal voice on the steering group.

"Before taking up my appointment I insisted that the implementation group be equally balanced between the banks and industry representatives. There are therefore seven from the banks and seven places for those representing SMEs/business, including a place for the APPG should they wish to take it up. I am the independent Chair. All of those invited, with the exception so far of the APPG, have accepted my invitation. Given the tight timescale, I also asked that members of the Group should be decision makers. UK Finance is temporarily providing secretarial support and we are now well on the way to appointing an independent secretariat accountable to the Steering Group. Similarly the Steering Group will appoint its own legal advisors," Shand-Smith said in an email.

The APPGFB also questioned the eligibility for the scheme as proposed and iterated Hammond and Bailey's comments that this should be re-examined. Lloyds Bank customers who went through the Griggs Review should be eligible, Hollinrake said.

"Andrew Bailey also agrees with our view that the scheme should provide redress for events that took place from January 1, 2000 onwards," Hollinrake said.

Arbitration tribunal

Ned Beale, partner at lawyers Trowers & Hamilins, drew up the plan for a financial arbitration tribunal which is the APPGFB's preferred solution for dealing with historic cases.

The DUP said an arbitration tribunal was the "only choice" for dealing with historic cases.

Beale told TRRI his idea for the arbitration tribunal was "inspired" by barrister Richard Samuel's proposal for a financial services tribunal and that such a judicial-led tribunal would ideally be the "end state" for handling lender/SME disputes, as its rulings would establish judicial precedent.

In the interim an arbitration tribunal, which does not require primary legislation, could begin hearing disputes. Its rulings would be legally binding under the Arbitration Act 1996.

An arbitration tribunal would:

- Be chaired by an experienced legal person with experience of both banking law and arbitration, who would be supported by two lay members, one from banking industry and one from SME side
- Build up case law, custom and practice for settling similar disputes
- Compel disclosure of all documents relevant to a case
- Be able to award damages for breaches of FCA principles for businesses
- Be able to hear cases brought by individuals who gave personal guarantees to businesses which were mistreated by their banks
- Make its awards public

Beale said the Chartered Institute of Arbitrators, if invited by the steering group to do so, could set up a scheme before the September deadline imposed by the chancellor.

"UK Finance has yet to receive the letter. Once we have received it we will review and respond," a UK Finance spokeswoman said on February 1.

Jail threat hangs over Australian banking bosses

Bernard Lagan Sydney

Several of Australia's top banking executives were contemplating prison terms yesterday after the head of a public inquiry delivered a scathing report that accused them of charging large fees for no services.

The 951-page final report by Kenneth Hayne, a former high court judge, came after a troubled year for banks and financial institutions as his royal commission of inquiry exposed in public hearings behaviour that included fees taken for no services, duping regulators and using heavy-handed methods to sell worthless products to the vulnerable.

The commission, set up by parliament after resistance by the Turnbull and Morrison governments, has triggered deep public mistrust and hostility towards banks and other finance institutions. It also has resulted in board and senior executive resignations.

The commissioner made clear that he did not accept that years of banks and finance institutions skimming fees from customers was because of sloppy administration systems, an excuse offered by the banks and largely accepted by regulators.

The combined customer remediation costs for AMP, the leading Australian financial group, and the four biggest banks stands at \$850 million (£470 million).

"The amount of money that just 'fell into the pocket' of so many large and sophisticated financial entities, the number of times it happened and the many years over which it happened show that it cannot be swept aside as no more than bumbling incompetence or the product of poor computer systems," Mr Hayne's report said.

Josh Frydenberg, Australia's Treas-

urer, said that there had been 24 referrals from the commissioner for potentially criminal conduct.

National Australia Bank and Commonwealth Bank could be referred to the Department of Public Prosecutions for criminal charges over charging fees for no services. AMP has already been referred. Each group could face a fine of \$9.5 million, or three times the benefit gained.

"On its face, taking money for nothing is dishonest conduct," Mr Hayne said in his report.

Financial institutions continued to deduct advice fees from customers' accounts even when there was no financial adviser linked with their account or when they had been advised of the client's death.

The commissioner made clear his view that senior bankers who were aware of the behaviour were also exposed to charges under corporate dishonest conduct laws that carry maximum prison sentences of ten years.

His report stopped short of urging radical changes to responsible lending requirements, likely easing concerns in the government of Scott Morrison, the prime minister, about a credit crunch that could worsen the housing market and damage the economy before this year's general election.

Mr Hayne's report attacked the banking and finance industries for being driven by greed and regulators for being soft. It urged a radical cultural change for the Australian Securities and Investment Commission, the main corporate watchdog.

Publishing the government's response to the final report, which supported all 76 recommendations either wholly or in part, Mr Frydenberg said that the "price paid by our community for this misconduct is immense".

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Warning to all big lenders

Behind the story

Australia's financial sector coming under investigation has been largely unnoticed by the rest of the world (Katherine Griffiths writes). Extraordinary accounts from ordinary people about the financial distress they have been put in by banks, the stress that manifested in one financial firm boss collapsing while giving evidence and the millions of pounds wiped off Australian companies' shares, have had almost no impact overseas.

They will continue to have an impact at home, however. The result of the year-long inquiry into Australia's banks, asset managers and insurers could even lead to senior

executives going to prison, which has happened almost nowhere else.

Many people would like to see Britain copy Australia's royal commission inquiry. They feel that there is pervasive wrongdoing among bankers, in particular. And it is the case that many customers get a poor deal. Fees for services such as overdrafts have fallen but remain pricey and, in many cases, are complex. Meanwhile, small businesses struggle with opaque terms and a lack of choice.

In some important ways Britain leads the world in financial regulation. Rules ranging from capital and leverage to conduct and pay are tougher than almost anywhere and may guide some of what Australia will do. But what is lacking in

Britain is the way in which Australian executives have had to admit in public to years of bad culture that has hurt customers. Bankers in Britain have been hauled before the Treasury select committee many times, but the sessions are sporadic and the process political, making it impossible for the outcome to be a candid account of how things are done.

A repeat of Australia's commission is not necessary in the UK, where regulators do, at least, tackle the big problems. Even so, established firms should scrutinise themselves far more rigorously, otherwise the future generations of customers will shun them in favour of fresher, supposedly more honest, competitors.