Question Set B

For victims of bank misconduct toward SMEs

Please note all of these points before answering:

- **If you have any questions please contact Andy Agathangelou, Chair of the APPG's Secretariat, at Email**
    - Only reply to this question set if it applies to you.
    - This Call for Evidence is being handled by the APPG's Secretariat and support staff, who will collate the evidence and provide it to the APPG's members.
    - Respondents' information will only be shared as necessary to enable the successful completion of the exercise and it will not be shared beyond the scope of this Call for Evidence.
- **Please note that we ask respondents to only give evidence that they are free to provide. It is entirely the responsibility of the respondent to ensure they take into account any agreement(s) they may have entered into.**
    - Respondents may choose to skip answering any of the questions if they wish.
- **It is for each respondent to decide whether their name and/or their responses are put into the public domain.**

The process to follow

- **Select the question set that relates to you. You may respond to more than one question set if you have different experiences of contact with the FCA.**
- **Download it, as a Word document, and save it on your computer.**
- **Provide your answers after each question.**
- **Please leave blank any questions that don't apply to you or that you do not wish to answer.**
- **Save the completed document on your computer.**
    - Please email it to Andy Agathangelou, **by 5pm on Monday 6th September**, at Email

Other important points to note

- **This exercise is about gathering evidence on what people think about the FCA; it is not about providing any assistance, guidance or advice on any case a respondent may have against the FCA, or any other entity.**
- **Respondents are asked to only provide answers to the questions given.**
- **Respondents are asked to not provide any supplementary evidence or documentation.**
- **Respondents are asked that their written response does not exceed 10,000 words in total.**

Question Set B

For victims of bank misconduct toward SMEs

Your Details

Name:

Stephen Barker

Company/Business (if applicable):

Hotel

Address including postcode:

REDACTED

Email address:

REDACTED

Mobile telephone number:

REDACTED

Permissions

- Do you give permission that your name is put into the public domain?
  - § Please enter Yes or No. …Yes (adjusted with Stephen's agreement on December 9th 2021).
- Do you give permission that your response is put into the public domain?
  - § Please enter Yes or No. …Yes (adjusted with Stephen's agreement on December 9th 2021).

Questions

1. **Please tell us about yourself and outline, just briefly to begin with, how you came to interact with the Financial Conduct Authority?**

My interaction with the FSA then FCA began following the mis-selling of Interest Rate Hedging products. It is only around that topic that I have had any dealings with FCA.

Factual context and outline

1. My Company banked with Bank of Scotland (BoS), subsequently acquired by Lloyds Banking Group. In 2001 BoS provided a 7-year term facility to build and operate a hotel in Manchester. The hotel was built and opened and operated successfully. In 2004, under Clause 3 of the loan agreement, the Company was *obliged* to consult *(the precise word of Clause 3)* with BoS and enter into a financial product offered by the BoS (and only BoS) to *protect* against movements in interest rates.

2. In 2004 the Company entered into what was represented by BoS as an ISDAFix swap for 5 years, to June 2009. The 5-year post construction completion period (of the 7-year loan term) for the hotel came to an end in September 2009. The swap came to an end in June 2009 before the end of the term loan.

3. In early 2008 BoS wanted to know what arrangements for repaying the loan or renewing the facility the Company intended. In reply, the preference was to renew the facility for another 5-years on similar or better terms. BoS then said that it believed better terms on the swap could be obtained and that would make renewing the facility even more attractive to 'credit' because there would be more left in the cash sweep to repay the capital sum if the ISDAFix costs were lower.

4. There was no hint of hesitation or uncertainty about renewing the loan for another 5 years. 'Rolling over' was the phrase used.

5. The discussions were with a senior BoS Corporate Bank Director, Chartered Banker of 35-years service with BoS, as well as a senior FCA registered from the BoS Treasury Capital Markets person (FCA number in part…….032 *Individual names withheld for reasons of confidentiality at this stage)*

6. The 2004 swap was broken and the break cost lent to the Company and 'embedded' in the new ISDAFix swap. It ran until 2013 with a break at year two, only in favour of BoS, and then a similar break annually, also only at BoS's discretion and at no cost to BoS.

7. The telephone trade took place on the 22nd April 2008 and ISDA headed documents for signature supplied later. By September 2008 BoS was reportedly insolvent. This fact was unknown to the public, but not the Regulator, that BoS was trading whilst insolvent (*Ref: Sally Matheson 'Lord Turner Report, September 2013', released to the public domain by the APPG on fair banking - Page 8 Executive summary "HBOS should have been a gone concern in February 2008. It was hopelessly insolvent by July 2008"*).

8. The Corporate Banker had been elusive during May, June and July 2008, then absent throughout August and no one else would, or could, deal with the renewal of the loan. The Corporate Banker retired from the Bank and was not available after September 2008 as the loan renewal date came closer. The Manchester branch of BoS became dysfunctional as Lloyds set about restructuring the combined bank.

9. In July 2009 BoS wrote to the Company's Statutory Auditors in reply to their enquiries under s499 of the Companies Act 2006 and clearly indicated it expected a new term facility to be in place by September 2009, the end of the 2001 term loan period. This was to encourage the Statutory Auditor not to qualify the Company's accounts, as they would *have* to do if the facility was repayable within 12 months from the year end.

10. The facility was not renewed and the account was transferred to the Business Support Unit (BSU) in Edinburgh. BoS instructed Grant Thornton to conduct an Internal Business Review (IBR), Pinsent Mason's to conduct a legal review of the security documentation and CBRE to complete a valuation of the property.

11. BSU made it clear they would not renew the loan facility and so the Company appointed KPMG to refinance the business. Offers of finance were received, solicitors instructed by the Company and the new lenders and completion was scheduled to occur before September 2011.

12. The bank would be fully repaid its debt and the ISDAFix swap assigned to one of the new lenders.

13. On the 4th August 2011 BoS served a demand for repayment of the loan within one hour. This could not be done and so BoS appointed Grant Thornton employees as Administrative Receivers by lunchtime.

14. A Statement of Affairs for the Company was produced and the two licenced insolvency practitioners took over the management of the Company.

15. At the first creditors meeting, on the last day of the 3 months from their appointment before creditors *must* be contacted by the Administrative receivers (s48 Insolvency Act 1986), at which only I attended as a residual creditor (shareholder), I was informed that the assets of the company had been sold.

16. All unsecured creditors (400 plus) had been taken into the receivership and paid as preferential creditors with the approval of BoS. BoS had been *fully* repaid including the break cost of the 2008 swap. All professional fees of the process had been paid. There was some VAT to be recovered from HMRC. There would be no distribution to shareholders.

17. The Administrative Receivers (ARs) refused to disclose the sale price. They did so at a later date. The VAT was recovered in due course and taken as fees by the Administrative Receivers. They refused to resign and wanted to liquidate the company. This could only be done with my consent as the Director – I refused. Clearly BoS and the ARs were hesitant about seeking a Court Order and providing a opportunity for shareholders, as residual creditors to object.

18. BoS then said in 2012 there was to be a further review of the mis-selling of swaps under an agreement with the FSA and the Administrative receivers should stay in office. The bank dismissed any claim the Administrative Receivers may have made under that review. We do not know what role, if any, the Administrative Receivers played in that review.

19. It was a sham to further run down the statute of limitations clock. The Administrative receivers resigned in March 2014. The 2012 FSA Voluntary Agreement with participating banks, including BoS, was not published at the time so we neither knew what BoS were expected or instructed by the FSA to do as part of the review, or how they came to the decision the 2008 swap had not been mis-sold.

2. What was the arrangement you entered into, with what entity/ies and when?

BoS term loan November 2001: floating 3-month LIBOR rate plus margin.

ISDAFix swap 2004 *and* ISDAFix swap April 2008: Both referenced to 3-month LIBOR and in GBP.

3. If you are happy to mention it, approximately how much money was involved?

a) Principal?

1. **£2,146,000 break cost of the 2008 swap. If restitution applied the balance of all netted off payments until the break. To be agreed with BoS Treasury although we have records of bank statements and payment transfers.**

2. **We do not believe this Swap was *ever* traded on ISDA so BoS suffered no loss on breaking the swap and made a false claim of a *debt* to the Administrative Receivers. BoS was, however, paid this amount.**

b) Total losses?

1. **Substantial; a profitable business was sold not for value and a foreseeable (by BoS) significant consequential loss of chance occurred.**

2. **The loss is made up of;**

the sale at undervalue

the netted off Swap payment from 2008 – 2011

the break cost claim in 3(a)

loss of chance to sell the asset in the open market

loss of chance to receive future gross profits (to reduce debt and increase equity value for shareholders).

3. **At December 2015 year end the purchaser records in the Statutory accounts an independent valuation of the property asset at £69m. The Company's assets had been sold for £37.5m including £1m of cash so the gain by 2016 was £32.5m not including profits from trading between Jan 2012 and December 2015.**

4. What was supposed to happen as you understood it; and what actually happened?

1. The 7-year term loan should have been renewed to a point in time 5 years beyond the end of the 2008 swap in 2013. It was not.

2. We became 'over-hedged' as a direct result of the bank's actions. If the bank was in any doubt it would renew the loan it should not have sold the swap in 2008 on the basis it would lead to the loan being renewed (rolled over).

5. What have been the consequences to you, your business (and if relevant to your family) as a result of what happened?

1. Substantial reputational damage for the outcome in a significant project awarded best property development in Manchester in 2005 by the Manchester Chamber of Commerce.

2. To have reported my business 'collapsed into receivership' is both inaccurate and damaging to my personal standing.

3. On a cash flow basis the business was solvent, as evidenced by all unsecured and secured creditors being paid or agreed with BoS to take a particular settlement.

4. I was disenfranchised of what had become my core business over 10 years from 2001-2011 through a conspiracy to cause harm by lawful means.

6. What could the FCA have done that might have protected you from harm?

1. It should have paid more attention to what BoS (and other banks) was doing with customers/clients and the products they were selling that were harmful to their Retail customers/clients (clients after November 2007). The banks knew FCA scrutiny was easily avoided.

2. They could and should have used the available powers under the FSMA 2000 particularly s384 Power of Authority to require restitution and s382 Restitution orders. Powers the FCA know they have and do use; and have had the statutory authority to use them confirmed by the Supreme Court *(Ref; Asset Land plc v FCA [2016] confirmed the Regulator has powers to issue interim and final restitution orders)*.

3. The FCA has a Statutory duty *(FSMA 2000 s5 The protection of consumers)* to Retail clients *(Consumers because they are not professional clients under MiFID and defined s138(7)(a)(i)FSMA 2000)* and failed to carry that out.

4. They wilfully excluded some 10,577 *(Ref FCA website 14th May 2020)* Retail clients from the FSA 2012 Voluntary Agreement by reclassifying them as 'Sophisticated'. Described by the Treasury Select Committee, in its March 2015 report on lending to SMEs, as an 'arbitrary' designation.

5. It is not just arbitrary, which it is, it is deliberate and wilful to remove the right to redress by restitution to *some* Retail clients, as prescribed under MiFID and the FSMA 2000, but not others. It is discriminatory.

6. The FSA, as Regulator, conspired with the Licenced Firms to ensure the largest monetary claims from SME's who were also Retail clients, would never receive redress through the extrajudicial process provided for under the FSMA 2000.

7. Prevented by s150 of FSMA 2000 to bring a claim for statutory breach only the Regulator could provide redress for legal persons (SMEs) and it resolutely refused to do so.

8. Although the company was classified by BoS as a Retail client in accordance with MiFID Annex II, and BoS being subject to an instruction from the Regulator to "tear up" swaps that extended beyond a loan term, it did not do so. (*Ref: letter of 29th January 2013 from Clive Adamson, Director of Supervision Conduct of Business Unit - Section E, Over hedging: para 29 to 35*)

9. BoS received this instruction from the FSA, never thinking it would be put in the public domain, and wilfully ignored it.

10. The public could only find out about the 2013 instructions from the Regulator to the banks when they were published in the Adamson letter several years later after pressure from the Treasury Select Committee (TSC).

11. Subsequent to the publication of the Adamson letter the FCA has wilfully refused to enforce it's own instructions to BoS (and other banks in the 2012 Review scheme).

7. What interaction have you had with the FCA about your case?

1. I have a correspondence file with the Regulator. It starts with polite responses by them to questions I have not asked and fails to answer any of the ones I have asked. After several more letters the FCA say they have nothing more they can usefully add and terminate the correspondence.

2. The FCA does make it clear they do not deal with individual cases of complaints against any Licenced Firm.

3. They have taken a position on the banks that the FSA 2012 Voluntary review deals with all possible claims. It has not and they know that.

4. The FCA has now spent years defending its own position which ignores the rights of Retail clients to be treated equally and not reclassified in an arbitrary way that leaves no prospect of an extrajudicial process envisaged under the

FSMA 2000 and MiFID which was fully transposed into UK law in November 2007.

5. The FCA has argued that the selling of swaps associated with loans is not a regulated activity.

6. The FCA fails to acknowledge that any person (legal or personal) who lends money as a business has to be licenced and it is a criminal offence not to be *(Ref: s19 FSMA 2000).* Therefore the business of all banks *is* licenced and regulated. For certain products, such as domestic mortgages, there is a more detailed set of rules and guidance but it is misleading for the FCA to say residential mortgages are regulated and commercial loans are not.

7. It is a convenient, if inaccurate, statement for the FCA to avoid responsibility for its own failings as a Regulator.

8. My complaint is not about the term loan contract but the collateral contract to that term loan, which was a more detailed regulated activity than the loan itself *(Ref: note 781 bullet point 8 to s22 "example interest rate swaps" which is included in FSMA (Regulated Activities Order SI 20001/544 Par.85 (1)(b)(ii) described as an "an index or other factor designated for that purpose in the contract." The 2008 ISDAFix contract refers to LIBOR as the basis of calculation for the floating rate of the swap. LIBOR and ISDAFix are indices.)*

9. Under the established legal principal of cause of action for collateral contracts restitution was appropriate by the Regulator *(Ref: Shanklin Pier Ltd v Detel Products Ltd [1951] 2 KB 854)*.

It wilfully chose not to take action in light of its own evidence of irregular activity by the licenced firms.

8. To your knowledge, what did the FCA do about your case?

Nothing other than the initial reply to my letters Para 7 above.

9. Do you believe the FCA could have done better once they became aware that you had suffered detriment?

1. As a class of Retail customers the FCA had a *duty* to perform under the FSMA 2000. They are like a fire brigade who do not attend fires.

2. The FSA worked with the offending banks to limit the banks financial liabilities by excluding Retail clients from the extrajudicial redress the 2012 Review offered.

3. The spurious criteria of the selection of retail clients were reminiscent of the Nuremberg Laws in Germany in 1935 – the Reich Citizenship Law that, at a stroke, removed rights previously held by all citizens prior to the passing of this Law. The criteria accepted by the FSA was arbitrary. (*Ref: as described by the Treasury Select Committee proceedings, 15th March 2015*)

Arbitrary conduct in public office is misconduct in public office.

4. The 2012 review criteria was not introduced following the Rule making of the FSMA 2000 by the FSA or by Statutory orders from the Treasury (*Ref: s22 FSMA 2000*).

5. In any event, such orders and/or rules based on the arbitrary criteria could not be brought forward in that way as such criteria offended the provisions of Markets in Financial Instruments Directive 93/22/EEC (MiFID) with regard to designation of a Professional trader. If not so designated, the person *was* a Retail client.

6. The Bank had a duty to classify the client (be it a legal or natural person) before any trade of derivatives. The BoS Treasury classified my Company as a Retail client.

10. What would you say about the FCA's effectiveness and timeliness in taking action to protect other business owners from this kind of harm?

The FCA is a failed institution of State. I only know of its conduct in the mis-selling of interest rate hedging products (IRHP) to Retail customers – renamed 'clients' after November 2007. That is the basis of my summary opinion as to the FCA's conduct and effectiveness.

11. How helpful has the FCA been to you and others affected in securing redress from the Financial Institutions that have caused you harm?

1. No help whatsoever.

2. It has been the main obstacle to redress by restitution for the banks irregular activity.

3. Set up as a regulatory body, outside of the courts, under the FSMA 2000 Statute, the courts are unwilling to insert the law of contract or common law torts into a Statutory Regulatory process. The courts are right to take that view.

4. The criminal law is possibly more helpful because, after many years of fraud being treated in a fragmented way, the 2006 Fraud Act is much clearer to prosecute than was previously the case. Private Prosecutions are perhaps the way forward. No time limitation and no cost awards, unless proven to have been

a malicious prosecution. The Licenced Firm has liability for its employees and former employees.

5. However, even with the Reading Fraud case and the expenditure of £7m of public funds to investigate then prosecute the case and jail sentences amounting to more than 50 years, Lloyds (BoS) bank have failed to settle the claims of victims.

6. The FCA has done nothing to accelerate those settlements even though the bank, as an FCA Licenced Firm, has been found liable for the *criminal acts* of its employees and consultants, including facilitating access to those customers/clients of the bank and disclosing confidential information about those clients' circumstances in breach of bank confidentiality.

7. The FCA is under various duties under the FSMA 2000 and so failure to perform those duties, it is plausible to say, is misconduct in a public office. The FCA is carrying out a function of government under the FSMA 2000 and so is a public body for the purpose of this common law criminal offence.

12. How effectively did the FCA act to prevent them doing it again?

1. I am not aware the FCA has changed anything. If the banks can abuse their customers they will. The culture has not changed.

2. The FCA refuses to use all its statutory powers against banks. Preferring a 'lessons learnt' approach which simply means the banks pay a reduced fine (30% discount) and continue unaffected.

3. The fine is paid by shareholders. That means, for BoS/Lloyds and RBS, the taxpayer as a past and current substantial shareholder. The fine goes to the UK Treasury. There is no restitution for customers/clients.

4. There is no penalty or other sanction applied to individuals in the offending bank, at any level. After 10 years of employment the Chief Executive of Lloyds left £60m richer and with a Knighthood for services to mental health and banking. The tragic irony of that public award for many customers, who have suffered mental health issues resulting from their treatment by BoS /Lloyds, is not lost on them. *(Ref; Telegraph 12th June 2021 page 10 – Max Stephens)*

13. What are your thoughts on any shortcomings at the FCA?

1. The FSMA 2000 was a robust piece of legislation – ambitious in its scope with wide powers of action available.

2. The Regulator under the Act was the best-equipped regulatory army to take to the field. We now know it was poorly led from day one.

3. The lobbying by the banks was effective in persuading the Treasury and others like the Secretary of State for Business Industry and Skills (BIS as was), who has the same powers as the Regulator, not to act once the shortcomings of the Regulator became known. However this fail-safe feature of the Act was *never* used by the Executive.

4. The Regulatory regime was built on two legal concepts:

a) Strict Liability for irregular conduct (similar to the Road Traffic Act with very little opportunity to offer a defence to conduct known to have occurred); and

b) Restitution – The principal that when irregular conduct is found the parties should be put back to the position before the event occurred.

This approach followed lessons learned from the 1990's scandal of selling swaps and other derivatives to Local Authorities that proved massively disadvantageous to those Authorities. Fortunately the House of Lords ruled, in the leading case, that Local Authorities had exceeded their powers under the 1972 Local Government Act so *all* the swaps contracts were null and void. Restitution (not damages after proving a loss) was the limb of the law that was applied. *(Ref; Hazell v Hammersmith and Fulham LBC [1992] 2 AC 1)*

That is how the FSMA 2000 is framed with irregular conduct the 'offence' and 'restitution' being the remedy for both parties. Restitution does permit consequential loss to be considered as part of any fair assessment of the amount of restitution.

14. What are your thoughts on whether the FCA lacks the powers that it needs; or conversely, that it doesn't make good use of the powers it already has?

1. The FCA has all the powers it needs. It has had them from day one. Parliament is not at fault.

2. The line of reporting to the Treasury, however, does compromise the independence of the FCA.

3. Having a Secretary of State (BIS) with the same powers was the check or balance that has not worked.

4. The Treasury has powers under s404 to review past business that it has not used.

5. The FCA may lack human resource and skills. That can be dealt with by increasing the levy on financial services until it becomes more cost effective to the Licenced Firms to *comply* with the Regulatory regime. The levy could be stepped with the largest entities paying the most and the Treasury contributing from the fines levied.

6. It is pointless giving any organisation Statutory powers if they are not used and the organisation is not well led. It undermines public confidence.

7. I do not agree that proper regulation will result in banks leaving the UK. Those that do, and are constituted as was Bank of Credit and Commerce International (BCCI), are welcome to leave. BCCI's collapse may have cost the Bank of England its loss of regulatory oversight to Parliaments new Regulator, but it has not performed any better and, some would say, much worse as more banks failed in what has been described as a systemic collapse in 2008.

15. In general terms, how would you describe what it's been like dealing with the FCA?

1. Totally unsatisfactory.

2. A complete betrayal of Parliament's intention and a work of fiction that the original legislation was defective to avoid acting on circumstances known about and evidence received.

3. The FCA criticism of the legislation is easy for the FCA to make in the full knowledge the Parliamentary persons who drafted the legislation have no right of reply. Private Eye's moniker 'Financial Complicit Authority' is well deserved.

16. What is your perception of the culture of the FCA, and what do you think about it?

1. Being at the FCA is a step to something else.

2. Within the FCA there is a hesitancy and perception of fear of offending the constituency of Licenced Firms particularly the bigger players such as the banks.

3. What we saw in the 1990s and 2000's will happen again. Those events only serve to highlight the need for an effective regulatory framework and also an effective organisation to operate within it.

4. The FSMA 2000 provided the framework. The culture of the FCA has undermined that framework.

5. A more qualified person to speak on this is Dame Elizabeth Gloster following her report into the collapse of London Capital Finance (LCF). As a former judge she has concluded the FCA had appropriate powers (in that case) but not appropriate policies and was overly cautious. *(Ref Private Eye reports - In the City - Capital offences)*

6. Her detailed look at the issues in that case only serves to confirm my impression of the FCA gained from my limited interaction with it.

17. Have you ever complained officially about the FCA; if so to whom? What happened, and how do you feel about what happened? What feedback, if any, have you had about your complaint? How helpful was the feedback? How long has it taken for your complaint to be processed?

1. I wrote to my Member of Parliament, then Mr George Osborne who was at the time also the Chancellor. He was not interested at all and not willing to see me. A couple of short letters thanking me for bringing the matter to his attention in a file of information he had requested – then silence.

2. Perhaps he felt conflicted as Chancellor because the Treasury has specific duties and responsibilities under the FSMA 2000 that he would prefer not to be looked at or to explain why those powers under Act were not used.

18.What do you think about the possibility of conflict of interest issues at the FCA?

1. In a 2106 United States Congressional review into why the London headquartered bank HSBC did not lose its banking licence in the USA for money laundering South American drug cartel money found that George Osborne, then Chancellor, and the FSA (Supervisory section) were lobbying the US Treasury Secretary *not* to remove/cancel HSBC's licence.

2. BlackRock was a major shareholder in HSBC *(Ref: value of BlackRock shares £9Bn Nils Pratley Guardian newspaper 6th April 2017).*

3. The then Chief Executive / then Chairman 2003-2010 of HSBC, Stephen Green now Baron Green of Hurstpierpoint, was appointed a Minister under the

Secretary of State for the BIS in the 2010 Coalition Government by David Cameron and was to advise George Osborne on Treasury matters.

4. Before George Osborne left politics he took up a number of roles including an advisory role with BlackRock on £650,000 per annum (£13,000 per day) plus undisclosed shares in BlackRock *(Re; same Nils Pratley article).*

5. HSBC did not lose its USA licence because it entered a Deferred Prosecution Agreement (DPA) with the US Justice Department that requires all criminal offences of HSBC to be admitted and HSBC be the subject of supervision by a Justice Department appointed person. The Directors and Management are not permitted to deny or conceal the DPA *(Ref: US Senate Cttm on Homeland Security and Government Affairs – Permanent Sub Committee on Investigations 2012, also reporting of Private Eye).*

6. The purchaser of my Company's assets was also a Main Board Director of HSBC 2001 -2007. It was purchased off market and never offered to the open market by the BoS appointed administrative receivers.

7. BIS Secretary of State, Vince Cable, was not inclined to get involved at all as the designated Secretary of State for FSMA 2000. It seemed the Treasury was the lead Government Department although it has no direct role under the FSMA 2000 Part XXV Injunctions and Restitution. The Secretary of State has a function under s384 Power of Authority to require Restitution and s382 Restitution Orders to be exercised if the Regulator (Authority) does not.

8. The FCA argued the FSA 2012 voluntary review for mis-selling (in 93% of cases) of derivatives/swaps/interest rate hedging products – collectively (IRHP) would provide quicker resolution and compensation for complainants than individual claims.

9. Those Retail clients excluded (arbitrarily) from the scheme could use the Courts.

10. The FCA said this in the full knowledge the Courts, in Grant Estates v RBS, had already ruled legal persons *could not* bring an action for Statutory breach because of its interpretation as a matter of law under s150 of the FSMA 2000 barring such actions. The Grant Estates case was not appealed.

11. The potential conflicts of interest between the Executive (in the form of the Treasury), the Regulator (as a Non Government Agency (NGO) with a line of responsibility to the Treasury) and the outlying position of the nominated Secretary of State for BIS (with the same powers as the Regulator) all, in theory, answerable to Parliament, is at best cumbersome and at worst conflicted in many ways.

12. They may all have differing short and long term objectives that will be exploited by those being Regulated, their lawyers and lobbyists.

13. The only people with *no* influence or knowledge are the banks' Retail customers/ clients. The very people the FSMA 2000 sought to protect by stopping market abuse and individual abuse by the irregular activities of the FCA registered authorised/approved individuals and licenced firms. *(Note; The Prudential Regulation Authority is not referenced because it came into existence in 2013). The Treasury has powers s404 FSMA 2000 to review past business and s14 (2)(a)(ii)(b)(i)(ii) for regulated activities defined at Par 3 (2)(b). It has not done so.*

19. If you could change three things about the FCA, what would they be?

1. The FSMA 2000 could be amended (again) to make the Regulator independent of Treasury and directly answerable to Parliament. The FCA could, like other public officials appointed under Statute, carry out specific duties.

2. The Regulator should start from the presumption the regulated are at fault unless they can show they are not, in other words strict liability. This may seem unfair, but that is exactly how the Road Traffic Act works for the rest of us and it stops the Courts being clogged with defence cases of no merit but the right to bring them. If the banks have the right to bring defence or counterclaims they will do so to supress or disrupt the Regulator.

3. The FCA has powers to Carry out Reviews s13, Gather Information s165, Investigate s170, s284 Chapter VI Investigations and Schedule 15 and it should do that *as a duty* (to actually attend the fire and put it out) if complaints are received. If it finds evidence to support the complaint then it should be quick to issue a restitution order under s382.

20. What positives are there about the FCA that you would like to comment on?

1. None – how can there be any when we are still waiting for the Regulators report into the collapse of BoS 12 years after the event and 4 years since it was last promised, in 2016.

2. Also, extrajudicial redress for the 10,577 *(Ref; FCA website updated 14/05/2020)* Retail clients arbitrarily excluded from the FSA 2012 voluntary review remains unresolved. The new Business Banking Resolution Service (BBRS) may do better than the FSA 2012 Voluntary review scheme, but there are still arbitrary criteria for eligibility to the BBRS.

21. Do you believe there should be spot checks by the FCA on regulated and/or unregulated entities, perhaps similar to the spot-checks by VAT inspectors?

1. Not especially – the powers to act swiftly are there, it's the will to do so that matters.

2. What might make a real difference is if 'whistle blowers' received a proper hearing, confidentiality and be rewarded as in the USA. Not every person in financial services is corrupt, a thief, dishonest or otherwise an inappropriate person to work in financial services. For honest people the culture may be, or becomes, uncomfortable. No one helps them. Internal complaint procedures do not work if complaining about the very activity approved of by the senior management and the individual is being instructed to carry out.

3. They are betraying the customer's trust in the bank, as an institution, by selling unsuitable products to the customer, relying on the customer's ignorance and misplaced trust in them as an individual and because of the 'halo' of being FCA regulated.

4. The financial incentive in the form of a monetary bonus they receive for doing so does not excuse them and they know that. I have met several individuals who left their employment to simply escape the pervasive, and in their view, morally corrosive culture being imposed by their line managers.

22. Do you have any concerns that this Call for Evidence may be counterproductive from your point of view?

That depends, but for the next generation they may avoid the experience I have had.

23. The FCA is undertaking a Transformation Project. Do you have any comments to make about that?

I am not familiar with what that entails.

24. Are there any other comments that you would like to make?

The APPG has, like other Members of Parliament on the Treasury Select Committee, paid a heavy price for their interest in and work on this subject. I do recognise that and thank them for their efforts. This is a long way from over, but Parliament must succeed to uphold the integrity of the banking sector that has been severely damaged by these events. It must also succeed to support SME's in all sectors for they make such a large contribution to the dignity of employment and the opportunities in the world of work.

~ END ~~

Thank you