

# FCA explains lack of action over RBS small business scandal

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The malpractice at Royal Bank of Scotland's Global Restructuring Group took place before the introduction of the senior managers' regime, which would have held executives responsible

The Financial Conduct Authority has refused to say whether it would have taken action against Royal Bank of Scotland bosses over the "widespread and systematic" mistreatment of thousands of small businesses had tougher rules been in place when the scandal took place.

The FCA has previously said that it could not act against the bank or senior managers over harm done to small and medium-sized companies by RBS's Global Restructuring Group (GRG) because business lending is not regulated. In a report published this morning the City regulator appeared to dodge the remaining question over whether it would have pursued RBS bosses if a regime that holds management accountable had been in place at the time.

The malpractice at GRG took place before the introduction in 2016 of the senior managers' regime, which was designed to ensure that executives are held directly responsible for their actions. In its final report on the scandal the FCA concluded that it "cannot say" whether it would have brought "successful cases against RBS senior management" had the rules "been in force during the review period", which covered 2008 to 2013.

"This would involve applying a new regime to a historic set of facts and it would not be appropriate for us to make a hypothetical judgment," the regulator said. The FCA did confirm, however, that it would have had "jurisdiction" to consider enforcement action had the rules been in place earlier.

The FCA found that some small business owners had "lost everything" after an encounter with GRG.

The division was supposed to help struggling companies to return to health after the financial crisis. An FCA investigation, published last year against the regulator's will, revealed that instead GRG gouged them for fees and subjected them to various forms of poor treatment. Nine in ten small and medium-sized companies handled by GRG were subjected to some form of mistreatment and one in six of the viable companies it managed had experienced "material financial distress" from its actions.

The FCA said that it could have banned senior RBS bosses from the City had the GRG misconduct been serious enough, but it had found "no evidence that any member of senior management was dishonest or lacking in integrity" despite the poor treatment of many customers. RBS bosses had to apologise for misleading parliament over the nature of GRG in 2014.

An earlier review of GRG commissioned by the FCA found that the “management of GRG were aware, or should have been aware, of some of the issues identified”.

The regulator added that it had found no evidence that RBS had artificially distressed and transferred otherwise viable SME businesses to GRG to profit from their restructuring or insolvency.

Andrew Bailey, chief executive of the FCA, said: “Our investigation has found that GRG clearly fell short of the high standards its clients expected but it was largely unregulated and so our powers to take action in such circumstances, even where the mistreatment of customers has been identified and accepted, are very limited.

“GRG has been highly damaging for those customers impacted and more widely for the reputation of the banking industry. Combined with other issues that have impacted SME’s it is important for all who work in this sector to regain the public’s trust.”

He said that the senior managers’ regime and an enhancement of the Financial Ombudsman Service had improved protection for small businesses.

Nikki Turner, director of SME Alliance, a group that represents companies mistreated by banks, said: “Yet again we are deeply disappointed that the regulator, having found ‘that some aspects of customers’ inappropriate treatment were systematic’, and that ‘some customers lost everything’, seems to have concluded none of RBS, its staff or its senior management could or should be held accountable in any way. It begs the question of why the FCA started an investigation or produced a report at all.”