

Watchdog kept RBS scandal report secret for fear bosses would sue

James Hurley, Enterprise Editor

December 5 2017, 12:01am, The Times

The Financial Conduct Authority decided not to publish a highly critical investigation into Royal Bank of Scotland's systematic mishandling of thousands of small and medium-sized companies because it feared being sued for "unfair treatment" by the bank.

Despite acknowledging the public interest in issuing its full investigation into the bank's Global Restructuring Group, the FCA concluded that to do so would expose it to an "unacceptable risk of successful legal action by current/former RBS managers", internal board minutes seen by *The Times* show.

The City regulator also discussed the "risk" that if the full document was published it "may raise expectations among smaller banking customers about the prospect of obtaining significant redress or compensation".

Almost 6,000 small and medium-sized companies went through GRG between 2008 and 2013. The bank, which is 72 per cent-owned by the taxpayer, was found to have "systematically" mistreated businesses by an FCA review commissioned in 2014.

The regulator has been at the centre of a heated political row over its refusal to publish the full report. Three summaries of the findings have been issued, but the FCA has told MPs that producing the entire document would not be in the public interest. However, records of board discussions show that in May last year, the FCA privately acknowledged that publishing the report in full would "increase transparency and minimise any perception that we have tried to fetter the report in some way".

The regulator's senior executives discussed the possibility that if publication was "resisted", only for findings to be leaked, "there is a reputational risk that the FCA may be perceived as whitewashing the skilled person's findings". *The Times* and the BBC have published leaked findings from the full report.

The regulator also considered that "if the report is not made public there are perception risks around our transparency of the review" and that there "may be less trust" in a complaints scheme set up by RBS. But by September 2016, internal records show that the FCA had decided not to publish the final report. It said external legal advice warned of a "high risk of successful litigation" if it was issued. It also was concerned that "Maxwellisation" to reduce legal risks, whereby those named are allowed to see a draft of the report before publication, would be a lengthy process.

Promontory, which conducted the review on the FCA's behalf, felt "the report was written in a way that meant it could be published", the minutes show.

Kevin Hollinrake, Conservative vice-chairman of the parliamentary group on fair business banking, said: “It is almost beyond belief that the regulator is living in fear of the banks that they are supposed to be regulating.”

Lawrence Tomlinson, the former government adviser whose allegations prompted the review, said: “Denying the availability of potentially supportive evidence to SME customers, on the basis that the FCA deems it will overly raise their expectations of success, does not seem to be a neutral stance for the regulator to take.” A spokesman for the FCA said the decision not
December 5 2017, 12:01am, The Times

Regulator must publish and damn RBS wrongdoing

Bill Esterson

Is our financial regulator living in fear of one of our banks? It’s hard to avoid that conclusion when we learn that the Financial Conduct Authority decided not to issue a critical report of a state-owned lender when it was told that it risked being sued by senior bankers.

Royal Bank of Scotland’s restructuring unit stands accused of the systematic destruction of many of its business customers. Three years ago the FCA commissioned a report into the treatment of the bank’s business customers by its Global Restructuring Group, which we have yet to see. Instead, we have to make do with a summary of the report, which describes a catalogue of inappropriate treatment of small and medium-sized companies by RBS, which is 72 per cent-owned by the taxpayer. Despite the clamour among affected businesses and MPs for the document to be disclosed, the regulator has said that it would not be in the “public interest” to do so.

Now we have FCA board minutes that show that the regulator was advised that it could face legal action from bank bosses who might feel that publication of the report would be “unfair” on them.

Of course, any managers identified should be entitled to review the report and respond to any allegations in it. The fact that our City regulator fears legal action if the report is issued paints an extraordinary picture of the relationship between a taxpayer-owned bank and the FCA. Where is the consideration of the interests of victims?

Promontory, the firm that wrote the report for the FCA, felt that it should be published in full. The FCA minutes show that it had been considering publishing the full document in the public interest. It is deeply disappointing that the protection of bank bosses may have prevented publication. We must get to the bottom of what happened in this scandal, which is why I have called for a judge-led inquiry into GRG.

Businesses were ruined, families torn apart and I have heard tragic stories of previously successful business owners who took their lives.

In response to the financial crisis, RBS placed thousands of businesses into GRG and put profitability ahead of its duty to customers. That much is in the public domain in the summary. We are left wondering how much bad practice was uncovered by Promontory that remains hidden.

What about the government's response to this issue? So far they have hidden behind the FCA, with ministers telling me in answer to a number of parliamentary questions that either they were awaiting a revised summary report or that publication was the responsibility of the regulator.

Well, time's up. The updated report was published last month. The government has a duty to respond as the FCA was set up by an Act of Parliament and RBS is state-owned. Ministers need to come off the fence. We know they want to sell the remaining RBS shares, but they cannot avoid difficult questions any longer. The victims won't go away. Nor should they: they deserve justice.

Trust in our banking system remains broken. Lending is pathetically low and falling. Only 9 per cent of smaller companies approached a bank to ask about borrowing money in 2016, down from 11 per cent the year before. The budget forecasts showed productivity, growth and living standards all falling. Access to finance for our smaller businesses is key to delivering the investment in new equipment and technology, which is vital if we are to tackle weak productivity. If we are to rebuild trust between business and banks, we must show that there is a willingness to tackle bad behaviour, not sweep it under the carpet.

With the regulator feeling unable to properly scrutinise RBS for fear of legal action, ministers must intervene. It's time that government made a choice to help to rebuild the trust in our banking system for the good of businesses and the wider economy. Heeding my calls for an independent inquiry would be a good place to start.

•Bill Esterson is shadow business minister and Labour MP for Sefton Central

Case study: three summaries but no answers

The Financial Conduct Authority does not as a rule publish "section 166 reports", investigations on its behalf by a third party (James Hurley writes).