



House of Commons
Treasury Committee

SME Finance

**Twenty-Fourth Report of Session
2017–19**

*Report, together with formal minutes relating
to the report*

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The Treasury Committee

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1 Introduction

1. Small and medium-sized enterprises (SMEs) form a hugely important part of the UK economy, accounting for 99.9 per cent of all private sector businesses and 60 per cent of all private sector employment.¹ The effective provision of finance to the UK's SMEs is therefore crucial for boosting the country's economic performance.

2. Yet the dark clouds of past misconduct still hang heavy over the SME finance market, undoubtedly weighing down on SMEs' trust in the financial institutions that serve them. Restoring that trust will enable the UK's SME sector to act as an even greater growth engine for our economy.

3. The events that contributed to the erosion of trust in lenders have been rigorously scrutinised by the Treasury Committee, both in this and previous Parliaments. This inquiry is, in part, a continuation of that scrutiny, and follows the Committee's specific investigations into events at RBS's Global Restructuring Group (GRG). Throughout this inquiry, and in line with its other work, the Committee has been clear that it would not be appropriate, or indeed possible, for it to investigate individual cases of misconduct. The Committee understands that a large number of business owners have suffered at the hands of financial services firms, but it does not possess the mandate or the resources to analyse every case individually. Although it is important to understand past events—some of which amount to misconduct by individuals and institutions—the Committee's scope for constructive action lies in ensuring the right lessons are learned for the future, and this report contains a number of recommendations that seek to address the deficiencies in the SME finance market that have been laid bare in recent years.

¹ Department for Business, Energy & Industrial Strategy, [Business Population Estimates for the UK and Regions 2017](#) (30 November 2017), p 1. SMEs are defined as businesses with 0–249 employees.

2 The SME finance market

Demand-side issues

4. Demand for external finance amongst SMEs remains subdued compared to recent years. In 2017, 38 per cent of SMEs used external finance, showing little change from the 37 per cent that used external finance in 2014, 2015 and 2016, but some way below the 44 per cent seen in 2012.² Looking at bank loans specifically, research by the British Business Bank (BBB, a Government owned, independently run development bank) shows that the proportion of SMEs applying for new loans has fallen from 2.9 per cent in 2012 to only 1.7 per cent in H1 2017, and that this decline is the result of ongoing “demand-side market failures”.³ The same research found that 70 per cent of SMEs are willing to accept a slower growth rate rather than borrowing to grow faster.⁴ Commenting on demand for finance, Suren Thiru, Head of Economics and Business Finance at the British Chambers of Commerce (BCC) told the Committee that, following the financial crisis, there has been a “shift from credit crisis to credit apathy”, resulting in “really weak” levels of demand.⁵

5. In taking evidence on the factors that are dampening SME demand for finance, the Committee identified a number of common themes. These are considered in turn below.

Awareness and understanding

6. The wide variety of financing options available to SMEs is a real strength of the UK market, yet the Committee heard that many SMEs may lack awareness of the various sources of finance available to them, and a sound understanding of what form of finance may be most appropriate. Stephen Welton, CEO of the Business Growth Fund (BGF, the UK’s most active investor in small and medium-sized companies), told the Committee:

What we need to do a better job of is increasing the understanding in the SME population as to where to go, because one of the frustrations is if you think that the solution to your problem is an overdraft, and you go and ask for an overdraft and you do not get it, that does not mean that you cannot raise funding. It means that you have gone to the wrong place to get funding. There is a big educational piece that we need to do.

[...]

For somebody who is nonfinancial, it is often quite intimidating to try to find funding. You do not know the language. It feels like a very opaque system, and you think that you are not necessarily going to be right for the person you are applying to.⁶

7. Katrin Herrling, CEO of Funding Xchange, an SME funding marketplace, noted that this problem is particularly pertinent amongst very early-stage companies, explaining that these businesses “often do not have a very good understanding of the different sources of

2 BDRC, *SME Finance Monitor Q4 2017 (15 March 2018)*, p 62

3 British Business Bank, *Small Business Finance Markets 2017/18* (20 February 2018), p 15

4 British Business Bank, *Small Business Finance Markets 2017/18* (20 February 2018), p 7

5 Q128

6 Qq4–5

finance, outside of the bank loan or the overdraft”, and that the solution lies largely in giving business owners the confidence to look beyond traditional debt finance.⁷ The BBB, too, has identified “information failures” as an important contributor to weak demand, noting that:

Anecdotal evidence suggests that some UK entrepreneurs do not fully consider the different options available to them to support their long-term growth. This reduces the efficiency by which capital is allocated to growing firms, meaning that high growth potential firms sometimes struggle to obtain the right finance that they need to grow to scale.

This is corroborated by survey data which has consistently shown that most UK SMEs are not aware of financial products beyond standard term bank loans, overdrafts and credit cards. And, even where they are aware of a product, often they may not practically know a trusted provider of that product to contact.⁸

8. This suggests that education and the provision of guidance is key. In its written submission to the inquiry, the Financial Services Consumer Panel said:

Small businesses need help to navigate the market. [...] Authoritative, independent and impartial guidance would enable small businesses to make informed decisions about whether to borrow or not, and the most appropriate options open to them, as well as help with their wider financial arrangements. It would give them the confidence to look beyond their main bank to find more suitable products and better service.⁹

9. Education and guidance can also be provided through mentoring services, such as those offered by certain lenders or business networks. Previous analysis has shown that firms who seek advice have a much greater chance of securing finance,¹⁰ and Newable, a lender and provider of other services to SMEs, told the Committee that “pre-loan mentoring can make a particular difference, as many SMEs can fail to secure finance due to avoidable errors in application forms”.¹¹ In December 2017, the Government created the Small Business Commissioner (SBC), an independent public body tasked with tackling late payment practices in the private sector. It was reported in July 2018 that the SBC is also looking to increase awareness of options for those SMEs struggling to access funding.¹²

10. It is naive to expect all business owners to possess a detailed understanding of the various financing options available to them. For many, the demands of running a business will leave little time for building financial expertise and searching the market. This points to a need for concise and easily accessible information targeted at the non-expert seeker of finance. As the centre of expertise on smaller business finance in the UK, the British Business Bank has an important role to play, and its Business

7 Q2

8 British Business Bank, *Small Business Finance Markets 2017/18* (20 February 2018), p 16

9 [Financial Services Consumer Panel \(SME 0014\)](#)

10 Business, Energy and Industrial Strategy Committee, First Report of Session 2016–17, *Access to Finance*, HC 84, para 45

11 [Newable \(SME 0021\)](#)

12 [“P2P industry must look outside of London”](#), Peer 2 Peer Finance News, 23 July 2018

Finance Guide and Finance Your Growth initiatives are to be welcomed. These tools must be maintained and promoted effectively to ensure they reach as wide an audience as possible.

11. The Small Business Commissioner is also well placed to assist SMEs in building awareness and understanding of the financing options available to them. The Government should expand the remit of the Commissioner to provide it with a formal role in helping small businesses to access the finance they need, particularly by improving levels of awareness and understanding of financing options.

Trust

12. A healthy SME banking relationship is dependent on mutual trust. However, high profile examples of widespread mistreatment of SME customers have negatively affected SMEs' trust in the banking sector, and have exposed the vulnerability of small business customers to poor conduct. This erosion of trust has contributed to the relatively weak levels of demand for bank finance in recent years. Suren Thiru of the BCC told the Committee:

Issues around trust are feeding into what is commonly called discouraged demand. Businesses are not going for finance in the first place because there are issues around trust. Some are lingering from the financial crisis.¹³

13. Restoring trust in banking is no small task. Since the financial crisis, financial institutions have made changes to the way they are run to instil greater confidence in their customers. The Committee heard that many incumbent banks have undertaken “root-and-branch” reviews of how things are done,¹⁴ with Amanda Murphy, Head of Commercial Banking at HSBC, noting that the bank has changed the way it trains, manages and incentivises its staff.¹⁵ At an industry-wide level, the Banking Standards Board—established to rebuild trust and promote high standards of behaviour in banking—continues to play an important role, particularly through its annual culture assessment programme.

The “perception gap”

14. In spite of this work, it is clear that there exists a perception amongst many SMEs that, were they to apply for external finance, they would not be successful. The expectation that they would be turned down leads many businesses to avoid applying in the first place.¹⁶ John Glen, Economic Secretary to the Treasury, told the Committee:

There is a challenge in terms of the mindset of SMEs [...] In a recent survey, 41 per cent of them said that they did not think they would be accepted for a loan, yet the facts are that eight out of 10 who apply do get a loan.

[...]

13 Q137

14 Q214

15 Q213

16 [OakNorth \(SME 0030\) para 16](#)

There is sometimes [...] a gap around people's perception of the likelihood of securing a loan.¹⁷

15. Data provided by UK Finance shows that around 100,000 SMEs applied for a bank loan in 2016/17, of which around 70,000 were successful.¹⁸ However, some in the industry question the usefulness of these statistics. In its written submission to the inquiry, iwoca, a micro- and small business lender, noted that “reporting of loan approval rates fails to capture the large numbers of businesses that enquire in branch or online about credit, but never formally apply because they believe they will be rejected whether for lack of collateral or historic financials, or that are simply discouraged by the drawn-out and burdensome application process”.¹⁹

16. Data on SME attitudes to external finance are concerning. The reluctance amongst many business owners to seek external finance is driven by a variety of factors, though it is clear that a lack of trust in lenders and an often misplaced fear of rejection are key contributors. The Economic Secretary recognised the challenges that stem from an entrenched unwillingness to apply for finance. The Treasury should conduct or commission work to identify why this attitude is commonplace amongst SMEs, and develop a strategy to ensure the UK's small businesses have the confidence to seek the external finance that is right for them. Efforts should also be made to ensure SMEs are aware of the options available to them if they are turned down for finance; specifically the Lending Appeals Process and the Bank Referral Scheme.

The supply of finance to SMEs

Equity finance

17. Given the importance of SMEs to the UK economy, it is vital that they benefit from an adequate supply of finance. Philip Duffy, Director, Enterprise and Growth at HM Treasury, told the Committee that “if you do not get a good supply of finance to high growth firms, you are going to struggle with the mediumterm productivity”.²⁰ Equity finance is particularly important for these high-growth firms, with Mr Duffy adding:

[...] compared with comparator economies [such as] Australia, the United States and some of the European economies, we clearly have a problem. We have a much lower proportion of our companies seeking equity. When they do seek equity, they do not do as well in later rounds of equity raising, and they exit the market sooner. There is a view from us that to fix some of these productivity problems we need to support that [...]. The work the BBB is doing is [...] not going to be enough unless we think about how we manage the really big resources—our pension funds and some of the institutional investors. That money is not reaching some of our start-up companies at the same speed that it does in other economies, and that is something that naturally really worries us.²¹

17 Qq246, 299

18 [UK Finance \(SME 0019\) para 25](#)

19 [iwoca \(SME 0032\)](#)

20 Q248

21 Q248

18. This point was also raised by Stephen Welton, CEO of the Business Growth Fund, who described the UK growth capital market as a “cottage industry”. He argued that the UK’s long-term investors, namely the pension funds, are not channelling enough capital into small businesses.²² In October 2018, the Government announced the appointment of Andy Haldane, Chief Economist of the Bank of England, as the Chair of the Industrial Strategy Council.²³ The Council’s remit includes, amongst other things, reviewing the impact of the Government’s Industrial Strategy, which contains various measures aimed at improving productivity and fostering the growth of SMEs.

19. The Committee welcomes the Treasury’s recognition of the challenges faced by high-growth, scale-up businesses seeking investment. The Treasury should assess what can be done to improve the extent to which these companies benefit from the capital of the UK’s long-term investors.

Bank lending

20. Despite gross bank lending to SMEs falling slightly in 2017, it remains a key source of finance for smaller businesses.²⁴ Nevertheless, the level of bank lending to SMEs remains lower than before the financial crisis.²⁵ Commenting on trends in the supply of bank finance, Keith Morgan, CEO of the British Business Bank, told the Committee:

... immediately after the financial crisis there were genuine issues of capital and liquidity in the banking system. You saw that many banks pulled back from lending and from lending to small businesses. We then went through a period, up until roughly 2014, in which there were continuing issues of supply and demand. From about 2015 onwards, we finally got to the point in the banking markets where the new lending that was issued to SMEs was larger than the repayment of old loans, which meant that the net increase was positive.

Frankly, since that time, it has not been very positive. If you look at the figures, they are very small increases. Roughly speaking, the stock of bank lending has been constant since that period.²⁶

21. Micro- and small businesses—as opposed to those at the larger end of the SME spectrum—have seen a particularly stark reduction in lending. In its written submission, iwoca noted:

The value of annual total lending approved for micro- and small business plunged by 38.7 per cent between 2013 and 2017, down to £7.2 billion. As part of that, the annual value of loans approved to micro- and small business dropped by a massive 40.2 per cent over the 4 years.²⁷

iwoca argues that this is down to a reduced risk appetite amongst banks coupled with a reluctance to adequately market credit to that segment of the SME community.

22 Q15

23 [“Chair of new Industrial Strategy Council appointed”](#), Department for Business, Energy & Industrial Strategy press release, 8 October 2018

24 British Business Bank, [Small Business Finance Markets 2017/18](#) (20 February 2018), p 53

25 [UK Finance \(SME 0019\) para 12](#)

26 Q127

27 [iwoca \(SME 0032\)](#)

22. Nevertheless, the banks that provided oral evidence to the Committee stressed the importance of SME lending to their overall businesses, and their ambitions to increase gross lending in the coming years.²⁸

23. Banks are often the first port of call for business owners seeking finance, and the importance of bank lending for SMEs is clear. While the fact that bank lending remains below pre-crisis levels may be cause for concern, the Committee accepts that a bank's risk appetite, and thus its willingness to lend to SMEs, is a legitimate commercial decision and a competitive differentiator. However, banks should keep their levels of SME lending under review to ensure they are regularly deciding whether it is optimal, rather than merely perpetuating historic trends.

Competition in the provision of SME finance

Banking competition

24. Following a lengthy market investigation, the Competition and Markets Authority (CMA) concluded in 2016 that “competition ... for SME lending is not working well for customers”.²⁹ It introduced a range of measures seeking to improve competition, which it acknowledged may take three to four years to fully take effect.³⁰ A lack of competition means banks have limited incentives to improve the price and quality of the services they offer to SMEs. A number of witnesses told the Committee that weak competition remains a key issue today. In its written submission, the British Chambers of Commerce described a “fundamental lack of competition” in the market,³¹ and Rishi Khosla, CEO of OakNorth, told the Committee that “competition is not working”.³² The Economic Secretary also recognised the problem, saying of competition in the sector:

There is more progress that can be made. [...] I have met with a number of challenger banks in the last few weeks and they are very determined to increase their lending to SMEs.³³

25. The UK banking market has seen a number of new entrants, with over 50 firms being granted a banking licence since 2008.³⁴ Yet the sector is still dominated by a small number of large institutions; a structure that the Minister described as “lots of Davids and four Goliaths”.³⁵ A number of challenger banks told the Committee that they remain at a significant competitive disadvantage, primarily due to the way in which certain regulatory requirements are implemented. John Glen recognised that challenger banks “are at a significant disadvantage in terms of their size and proximity to getting a bigger foothold in the market”.³⁶

28 Qq212–213

29 Competition and Markets Authority, *Retail banking market investigation final report* (9 August 2016), p xxvii

30 [Oral evidence taken on 1 November 2016, HC \(2016–17\) 231, Q296](#)

31 [British Chambers of Commerce \(SME 0017\)](#)

32 Q215

33 Q246

34 British Business Bank, *Small Business Finance Markets 2017/18* (20 February 2018), p 56

35 Q264

36 Q246

26. Capital requirements are typically calculated differently for challenger banks compared to their larger competitors. Calculating the amount of required capital involves determining a firm’s “risk-weighted assets” (a measure that assigns weights to a bank’s assets to reflect their relative risk of incurring loss), and making sure a certain percentage of these assets are backed by capital. For smaller banks, risk-weighted assets are typically calculated using a standardised model, whereas larger banks are often able to employ bespoke, internal models for some SME lending portfolios. OakNorth described the implications of this discrepancy in its written evidence:

... new banks like OakNorth have to adhere to more onerous capital requirements and hold up to 10 times more capital than larger banks to write the same loan. We have to use a Standardised Approach to our risk weighting, compared to the Internal Risk-Based model that larger banks get to use. By being able to apply our own model regarding risk weighting instead of having to use the Standardised Approach, we would have a larger amount of capital at our disposal.³⁷

27. Capital requirements in the UK stem from EU law, which is in turn derived from global standards set by the Basel Committee on Banking Supervision. Rishi Khosla told the Committee of his hope for changes to the UK regime following the country’s exit from the EU:

The risk-weighted assets are less in our control today, but obviously with Brexit that is an opportunity for the UK to take a view itself away from the EBA’s guidance on how to treat risk-weighted assets—we hope in a more proportionate manner for organisations that are scaling ...³⁸

This view was shared by the Institute of Chartered Accountants in England and Wales (ICAEW), whose written submission stated that Brexit may provide “greater flexibility to examine options that could reduce the costs for smaller banks [...] For example, more proportionate, differentiated capital rules”.³⁹ The Economic Secretary also noted the need to consider how best to structure the requirements in future, telling the Committee:

... I have had my ears blasted a number of times by challenger banks over the way that capital requirements have been applied [...] We have been bound by the rules as they have existed. There are new ways of looking at it. If you look at the way the banks operate in the US, there are different ways that the capital requirements can be interpreted. These are matters that will need to be considered.

[...]

We need to do all that we can to enable real competition between those different entities—legacy and new entrants.⁴⁰

28. The Prudential Regulation Authority (PRA) made adjustments to its capital regime in 2017, reducing capital requirements for smaller firms using the standardised approach to risk weighting. The changes were described by Sam Woods, Deputy Governor for

37 [OakNorth \(SME 0030\) para 10](#)

38 Q220

39 [ICAEW \(SME 0037\) para 22](#)

40 Q264

Prudential Regulation at the Bank of England, as “a major step forward for the PRA in facilitating effective competition”.⁴¹ These changes were welcomed by the challenger bank community, though evidence submitted to this inquiry suggests that capital requirements remain a concern.

29. A lack of competition in SME banking, which has long-plagued the UK market, remains a key area of concern. While the emergence of new entrants is welcome, by the Government’s own admission, more work is needed to bring meaningful competition that will improve outcomes for SMEs. The Minister is correct to recognise the significant task faced by challenger banks seeking to break the stranglehold of the large incumbents.

30. The previous Treasury Committee was unconvinced by the outcome of the CMA’s retail banking market investigation. Two years have passed since the publication of the CMA’s final report, yet the concerns around the level of competition persist. Given that the CMA itself noted that its measures were expected to take three to four years to have a noticeable impact, the Committee will monitor developments closely over the next two years. The Committee recommends that, in response to this report, the CMA provides an update on the implementation and impact of the measures introduced to improve competition in SME banking.

31. Despite welcome changes to the PRA’s regime in 2017, capital requirements remain a specific source of dissatisfaction for the UK’s smaller banks. The Committee is clear that the UK’s exit from the EU should not herald a new era of laxity in capital regulation, but considers that there is an opportunity to consider how the regime can better support competition without compromising safety and soundness. The Government should provide its assessment of how this could be achieved.

The RBS Alternative Remedies Package

An overview

32. As a condition of the European Commission’s approval of the Government’s £45 billion bailout of RBS, the bank had to take measures to reduce its size and market share. This involved undertaking five major divestments, four of which have been completed. The fifth commitment—to sell off its Williams & Glyn business—was aborted after attempts to sell it to a competitor and to establish it as a standalone bank both failed.⁴² In response, the Government proposed an alternative set of initiatives with the aim of achieving the same outcome; improved competition in the SME banking market. This set of initiatives—known as the Alternative Remedies Package (ARP)—was formally approved by the European Commission in September 2017.⁴³

41 [“PRA launches consultation on Pillar 2A capital framework”](#), Bank of England press release, 24 February 2017

42 HM Treasury, [RBS State aid: alternative remedies package](#), 18 September 2017

43 [“State aid: Commission approves alternative to divestment commitment for Royal Bank of Scotland”](#), European Commission press release, 18 September 2017

33. The package seeks to transfer three per cent of RBS's SME banking market share to its competitors through two remedies:⁴⁴

- **Capability and Innovation Fund:** This initiative will see RBS provide 15 grants, ranging in value from £5 million to £120 million and totalling £425 million, to its competitors. The recipients will be required to use the grants to improve their SME banking service, and thus their ability to compete with RBS. The grants are split into four “pools” as set out below.

Table 1: Capability and Innovation Fund

Fund	Number and value of grants	Purpose
Pool A	1 x £120 million 1 x £100 million 1 x £60 million	To facilitate the development of more advanced business current account offerings and ancillary product sets by banks with existing and substantive business current account capability
Pool B	1 x £50 million 2 x £15 million	To facilitate the modernisation of existing business current account offerings or (in the case of eligible bodies without existing business current account offerings) the development of new propositions
Pool C	4 x £10 million	To facilitate the development of new and existing SME lending and payments businesses with a particular focus on facilitating the deployment of new technology to the relevant markets
Pool D	5 x £5 million	To facilitate the commercialisation of financial technology that is relevant to SMEs

Source: Introduction to the alternative remedies package: information pack, HM Treasury, 3 September 2018

- **Incentivised Switching Scheme:** Under this scheme, RBS will provide to its competitors dowries totalling £275 million, which those firms must use to incentivise certain RBS SME banking customers to switch their business to them. RBS will provide a further £75 million to cover the costs associated with switching.

Concerns over design and implementation

34. Firms applying to receive grants under the Capability and Innovation Fund must meet certain eligibility criteria. These criteria stipulate that those applying for Pool A and Pool B grants are required to have gross assets in the UK of less than £350 billion, with the largest grants aimed at firms with “existing and substantive” business current account offerings.⁴⁵ Many challenger banks have expressed concern at the eligibility criteria, arguing that they enable large, well-established firms to benefit most, whereas the package would be better targeted at smaller challengers. Anne Boden, CEO of Starling Bank, said of the package:

44 HM Treasury, [RBS State aid: alternative remedies package](#), 18 September 2017

45 HM Treasury, [Capability and Innovation Fund terms and conditions](#)

The small business banking market has no meaningful competition and the RBS fund needs to back genuine disrupters, rather than established high street banks who have taken small business owners for granted for too long.⁴⁶

In its written submission, OakNorth argued that “larger banks such as Santander, Nationwide and TSB should be excluded from the fund”.⁴⁷ Smaller banks may also be unable to devote as much resource to applying for the grants compared to their larger competitors. Two of the UK’s most established challenger banks, CYBG and Metro Bank, reported £5 million and £590,000 of spending relating to the package respectively earlier this year.⁴⁸ In his evidence to the Committee, the Economic Secretary recognised the “concern expressed about who is eligible”.⁴⁹

35. Non-banks have also expressed displeasure at the design of the package. Written evidence submitted by iwoca states that “less than 8.5 per cent of the £700 million package is potentially available to alternative lenders despite their proven track record of providing much needed funding to micro and small businesses”.⁵⁰

36. The Alternative Remedies Package was originally due to be implemented in the first half of 2018. However, as noted by the Minister, the recruitment of the Directors of the independent body (Banking Competition Remedies Ltd. (BCR)) responsible for administering the package “took longer than initially expected”. As such, the package is now due to be launched in November 2018.⁵¹ Prior to the announcement of this timetable in July 2018,⁵² firms looking to benefit from the package complained of a lack of communication regarding the package’s implementation and of the costs associated with delays.⁵³

37. The Economic Secretary told the Committee that there is more that needs to be done to improve the Alternative Remedies Package. This is unfortunate, as the opportunity for the Treasury to adjust the package has long since passed. The Committee views the initiative as a rare and critically important opportunity to provide a meaningful boost to competition in the SME banking market. Both the Treasury and the independent body administering the package must take a similar view, and should not see this initiative simply as a compliance exercise to satisfy the European Commission’s State aid requirements.

38. It is disappointing to hear that the industry is expressing concerns about the package’s design and implementation. Delays to implementation are not without cost, and given those witnessed to date, it is all the more important for Banking Competition Remedies Ltd to administer the Alternative Remedies Package in as timely a manner as possible.

46 [“Starling to recruit head for SME banking as it targets RBS fund”](#), Starling Bank press release, 24 April 2018

47 [OakNorth \(SME 0030\) para 10](#)

48 CYBG, [Interim Financial Report 2018](#), p 6; Metro Bank, [Q1 Trading Update 2018 \(25 April 2018\)](#), p 5

49 Q250

50 [iwoca \(SME 0032\)](#)

51 [Letter from Economic Secretary to Chair of the Treasury Committee](#) (30 July 2018)

52 [“Banking Competition Remedies Ltd \(BCR\) market update”](#), [Lansons press release issued on behalf of BCR, 16 July 2018](#)

53 [“RBS £775m competition scheme setback blamed on executive hiring delays”](#), The Telegraph, 16 July 2018

Innovation and alternative finance

The rise of alternative finance

39. Alternative finance is typically thought of as funding that does not involve traditional financial institutions. The term covers a wide variety of financing models that have emerged outside of the traditional financial system. The sector has grown considerably in the UK in recent years, albeit from a low base. The Economic Secretary said of the sector:

We see a number of options around peer-to-peer lending; we see invoice financing, we see more asset financing.

[...]

I see it as a growing segment. I think the alternative sources of funding will become more popular, but it is from a small base that is growing rapidly.⁵⁴

Keith Morgan discussed the recent growth in alternative finance, saying:

... there has been the growth of some alternative forms of finance, which I see as encouraging. The biggest item to point out is probably asset finance [...] That has been growing at, roughly speaking, 10 per cent to 12 per cent a year over this period. [...] We have also seen a growth, from a small base, in peer-to-peer and other marketplace lending.⁵⁵

40. There are a number of reasons behind the growth in alternative finance. James Meekings, Co-Founder and UK Managing Director at Funding Circle, told the Committee what attracts SMEs to his peer-to-peer lending platform:

We continually hear stories that it takes months for them [SMEs] to get finance through a bank. Through us, it takes 10 minutes to apply online. [...] We then get a decision to them within 24 hours

[...]

They get to do it any time they want. What we typically find is that 50 per cent of the initial registrations from businesses happen in hours when they could not get a meeting with their bank manager. The traditional experience through banking does not really meet with the modern world that small businesses are looking for. There are then some secondary things around transparency of fees. There are a lot of different fees that banks may charge. We are trying to be much clearer.

[...]

The last thing on customer experience is pricing. We use data and technology to make sure that we price risk appropriately. That means that we think we can price better than banks on some loans, and therefore that is a better experience as well.⁵⁶

54 Qq311–312

55 Q127

56 Q4

41. James Meekings also suggested that alternative lenders are filling a gap in the market created by banks pulling back from certain types of lending, noting that “banks do not really do cash-flow lending to small businesses”.⁵⁷ He also highlighted the opportunities presented by partnerships between alternative finance providers and banks:

What you actually need is nonbank solutions to complement banks [...] We have partnerships with RBS and Santander, and they want to keep that banking relationship. They want to sell the insurance. They want to sell the foreign exchange. They want to crosssell everything, but if they cannot do the lending, they do not want to lose all of the other stuff. The biggest advantage that they have is the plumbing, and how tied in to them SMEs are.⁵⁸

42. Certain types of alternative finance, however, target a different customer base to the banks. Luke Lang, Co-Founder of CrowdCube, said:

... equity crowdfunding satisfies a different demand to banks. It is for those aspirational, ambitious, startup, earlystage businesses that really want to grow quickly and rapidly, and maybe they do not have the assets to back it up with debt finance, or they do not want—or are unable to meet—the interest repayments from a bank loan.⁵⁹

43. Equity crowdfunding and peer-to-peer lending are popular forms of alternative finance, and both are regulated by the Financial Conduct Authority (FCA) as “regulated activities” under the Financial Services and Markets Act 2000.⁶⁰ Regulation provides those using the platforms with a degree of comfort, and may have contributed to the sector’s strong growth in recent years. Luke Lang praised the regulatory regime for equity crowdfunding in his oral evidence:

The regulation on our side is actually pretty good and balanced. [...] It has certainly enabled our industry to go from a very nascent industry to really flourish and become a mainstream source of capital for British entrepreneurs. We are genuinely leading the world when it comes to alternative finance. Peer-to-peer lending and equity crowdfunding is at the forefront of that. That is something we should be proud of. It pains me to say it, but we should give the FCA some credit for that.⁶¹

44. The FCA launched a post-implementation review of its regulation of equity crowdfunding and peer-to-peer lending in 2016. Its findings were published in July 2018—significantly later than intended—alongside proposed changes to its rules for peer-to-peer platforms.⁶² Luke Lang, Co-Founder of CrowdCube, told the Committee of his disappointment in the delays to concluding the review, saying: “It is now over 18 months late. That is not particularly helpful”.⁶³

57 Q4

58 Q12

59 Q3

60 Financial Conduct Authority, [“Crowdfunding”, Accessed 7 August 2018](#)

61 Q46

62 Financial Conduct Authority, [CP18/20: Loan-based \(‘peer-to-peer’\) and investment-based crowdfunding platforms: Feedback on our post-implementation review and proposed changes to the regulatory framework \(27 July 2018\)](#)

63 Q46

Government initiatives

45. The Government has taken steps to promote the growth of the UK's alternative finance sector. Funding Circle's written submission, however, notes that "banks continue to hold some competitive advantage, predominantly due to the fact that they hold large amounts of historic data such as current account information on small business customers".⁶⁴ Nevertheless, it goes on to explain that "the government has helped to significantly level the playing field" between banks and alternative finance providers.⁶⁵

46. One measure designed to improve competition is Open Banking, which may provide significant opportunities to innovative alternative finance providers with existing date-led operating models. James Meekings predicted that Open Banking will "unleash more innovation and competition", and that the "wealth of data" it will bring will allow Funding Circle to lend to more businesses and to price loans "more accurately".⁶⁶

47. Open Banking allows consumers and SMEs to securely provide regulated third parties with access to their financial information.⁶⁷ However, recent survey data shows that only six per cent of UK adults would not be concerned about sharing their financial data with companies other than their main bank.⁶⁸ Open Banking will allow SMEs to better demonstrate their creditworthiness to prospective lenders and to quickly identify services that best suit their needs, for example. The Treasury spoke positively of the potential of Open Banking, noting that it will be "quite transformative", and will lead to "better products" that will be "extremely beneficial to SMEs".⁶⁹ A number of witnesses told the Committee that Open Banking will take time to have a noticeable impact on the market, however. Katrin Herrling warned that Open Banking "is going to take a little while to bear full fruit".⁷⁰

48. A number of other Government schemes have been introduced to encourage the growth of the UK's alternative finance sector, and the SMEs that make use of it. The introduction of the Innovative Finance ISA—which allows peer-to-peer lending agreements to be included within an ISA tax wrapper—was described by James Meekings, Co-Founder and UK Managing Director at Funding Circle, as an example of the Government being "very successful in helping get more money into small businesses".⁷¹ The Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) also received praise from witnesses, with Luke Lang noting they have made the UK "the envy of Europe".⁷²

49. The UK's alternative finance sector has demonstrated impressive growth in recent years. This is beneficial for SMEs seeking funding, and is in part down to measures introduced by the Government to encourage the sector's development. However, it still accounts for a relatively small portion of the overall SME finance market, and it is likely that potential for further growth still exists. The Government must not rest on

64 [Funding Circle \(SME 0034\)](#)

65 [Funding Circle \(SME 0034\)](#)

66 Qq12, 57

67 Open Banking, "[What is Open Banking?](#)", Accessed 9 August 2018

68 YouGov, "[Three quarters of Britons haven't heard of open banking](#)" (1 August 2018)

69 Q327

70 Q58

71 Q21

72 Q66

its laurels; further work will be required to ensure the UK's alternative finance sector fully realises its potential while maintaining appropriate standards of protection for consumers.

50. Open Banking has the potential to bring significant benefits for SMEs seeking finance. Its impact on the market to date, however, has been muted. As an initiative based fundamentally on the sharing of private financial information with third parties, its success will depend heavily on the willingness of consumers and SMEs to trust those firms. Perhaps understandably, given the frequency of high-profile IT failures and data breaches, that trust appears to be seriously lacking. The Treasury told the Committee that it expected the impact of Open Banking to be slow to materialise, but the Committee urges it to take a more ambitious stance. Working with the Competition and Markets Authority, the Treasury should provide an assessment of the initiative's effect on the market to date. The authorities should also set clear and challenging milestones for the industry in relation to the timely development of Open Banking services, and deliver a comprehensive strategy for combatting the clear public trust issues that threaten to undermine the initiative.

3 Misconduct and regulation in SME banking

Past misconduct in SME banking

An overview

51. Conduct in the SME banking sector has long been subject to scrutiny, including by the Treasury Committee.⁷³ There have been a number of high-profile cases of poor treatment of SME customers, most notably the mis-sale of hedging products, the treatment of SME customers at RBS's Global Restructuring Group (GRG), and the fraudulent activity conducted at HBOS Reading. Throughout this inquiry, the Committee has sought to examine the characteristics of the SME banking market that allowed these pockets of misconduct to exist, and to consider the changes that may be necessary to prevent such behaviour in future. The Committee has also conducted further scrutiny of events at RBS GRG, and the regulatory response.

RBS Global Restructuring Group (GRG)

Background

52. GRG was a business support unit at RBS that operated between 2008 and 2014. Concerns surrounding the treatment of small businesses referred to GRG received significant public attention following the publication of Lawrence Tomlinson's 2013 report, entitled *"Banks' Lending Practices: Treatment of Businesses in Distress"*. Mr Tomlinson, then the Entrepreneur in Residence at the Department for Business, Innovation and Skills, alleged that RBS was "unnecessarily engineering" businesses into default, and that GRG existed to "make profit for the bank through the destruction of viable businesses", primarily through "fees, increased margins and devalued assets".^{74,75} Since the publication of the Tomlinson report, a number of investigations have been carried out to examine the accuracy of the allegations contained therein, and in 2015 the Treasury Committee of the time analysed events at GRG as part of its inquiry into *"Conduct and competition in SME lending"*.⁷⁶ More recently, the Committee has sought to bring further transparency to events at GRG, including by taking evidence from RBS in January 2018 and publishing a range of relevant documents.⁷⁷

53. On 17 January 2018, the Committee published correspondence between the Chair and Ross McEwan, Chief Executive of RBS, which included an internal RBS memorandum entitled *"Just Hit Budget!"* written in 2009.⁷⁸ The memorandum—distributed to a subset of GRG staff—contains guidance for staff on generating income via dishonest means. The "tactics", "tips" and "ways to generate income" in the memo include:

73 See, for example, Treasury Committee, Eleventh Report of Session 2014–15, *Conduct and competition in SME lending*, HC 204

74 Lawrence Tomlinson, *Banks' Lending Practices: Treatment of Businesses in Distress* (25 November 2013), p 2
75 Q96

76 Treasury Committee, Eleventh Report of Session 2014–15, *Conduct and competition in SME lending*, HC 204

77 Treasury Committee, *RBS's Global Restructuring Group and its treatment of SMEs*

78 *"Treasury Committee publishes documents relating to RBS' Global Restructuring Group"*, Treasury Committee press release, 17 January 2018

Basket cases: Time consuming but remunerative.

[...]

Be specific: avoid round number fees - £5,300 sounds as if you have thought about it, £5K sounds like you haven't.

Rope: Sometimes you need to let customers hang themselves. You have then gained their trust and they know what's coming when they fail to deliver.

[...]

Monthly fees: minimum £500. Ideally on average we need c10 per cent premium on our debt [...] They normally cannot afford this and you can then leverage an upside.⁷⁹

54. When challenged by the Committee on the contents of the memo, Sir Howard Davies, Chairman of RBS, said:

I am acutely embarrassed by those documents. [...] They are the stuff of which nightmares are made, as far as a chairman or a chief executive is concerned. [...] We can do nothing but abase ourselves as far as that is concerned. It is absolutely awful.⁸⁰

Tony Boorman, Managing Director at Promontory Financial Group, a consultancy appointed by the FCA to investigate the actions of GRG, described the memo as “reprehensible and inappropriate for production by any person with “manager” in their name in any sensible financial institution”. He added that, in the course of Promontory’s investigation, “other comments ... that were similar in tone and spirit” to those contained within the “*Just Hit Budget!*” memo were seen within GRG files, and that the existence of these documents “spoke to something around the culture of the bank at that time”.⁸¹

55. Ross McEwan told the Committee that “the culture, structure and way RBS operates has changed fundamentally” since events at GRG.⁸² In an interview in October 2018, he stated that “I think it will take five—maybe even 10—years to rebuild trust to where we’d want it to be”.⁸³ Supplementary evidence provided by RBS to the Committee following the evidence session in January 2018 noted the number of staff working at RBS Restructuring—the bank’s new restructuring unit—that previously worked in GRG:

There are currently 182 employees in Restructuring of whom 136 worked in GRG.

32 of the current employees are at senior manager grade or above. 30 of the 32 were formerly in GRG.⁸⁴

79 [Letter from Chief Executive of RBS to Chair of the Treasury Committee \(9 January 2018\)](#)

80 [Oral evidence taken on 30 January 2018, HC \(2017–19\) 737, Q157](#)

81 [Oral evidence taken on 30 January 2018, HC \(2017–19\) 737, Q59](#)

82 [Letter from Chief Executive of RBS to Chair of the Treasury Committee \(9 January 2018\)](#)

83 “RBS boss: rebuilding trust will take another ten years”, BBC News, 10 October 2018

84 [RBS, RBS Supplementary Evidence Addendum \(27 February 2018\)](#)

56. The treatment of vast numbers of SME customers placed in RBS's Global Restructuring Group was nothing short of scandalous. The actions of GRG staff heaped untold misery on hard working business owners, recklessly destroying livelihoods in pursuit of profit. The “*Just Hit Budget!*” memo typified the toxic and unscrupulous culture entrenched within the organisation; a culture that has been rightly highlighted as a key driver of events at GRG.

57. It is widely acknowledged that an organisation's culture is strongly guided by the “tone from the top”; the standards of ethics and integrity demonstrated by those in senior positions. The overwhelming majority of those responsible for cultivating GRG's patently unprincipled culture remain employed in RBS's new restructuring division. This threatens to seriously undermine RBS's claim that the bank's culture has changed fundamentally in recent years, and raises concerns that the bank has merely undertaken a rebranding exercise.

The regulatory response

58. In response to the Tomlinson Report, the FCA used its power to appoint a “skilled person” under section 166 of the Financial Services and Markets Act 2000 to commission an independent review of the treatment of SMEs referred to GRG between 1 January 2008 and 31 December 2013.⁸⁵ The FCA's review process comprised two phases:

- **Phase One:** To consider RBS's treatment of a sample of SME customers referred to GRG to assess the validity of the allegations of inappropriate treatment, and to consider whether any poor practices identified were widespread and systematic.
- **Phase Two:** If poor practices were found to be widespread and systematic, to identify the root cause of these issues, including whether inappropriate treatment was known about, authorised or sanctioned by management within RBS, and to make recommendations to address any shortcomings identified.⁸⁶

59. The FCA published a summary of the findings of the phase one report—conducted by Promontory Financial Group—on 8 November 2016.⁸⁷ The Promontory report was leaked to the BBC in August 2017,⁸⁸ prompting the Chair of the Committee to write to Andrew Bailey, CEO of the FCA, saying:

It is now three and a half years since the FCA commissioned the skilled persons review of GRG, and nearly a year since it received the final report. If the FCA had published an early and full account of the findings, including data on the scale of mistreatment and inappropriate action, the BBC would have had nothing of interest to report from the leaked document.

The skilled persons report is now in the hands of an unknown number of third parties. The FCA has no control over the timing or content of further

85 Financial Conduct Authority, *Final Requirement Notice, Skilled Persons Report* (20 May 2014)

86 Financial Conduct Authority, *Statement on further investigative steps in relation to RBS GRG* (31 July 2018), p 6

87 Financial Conduct Authority, *Statement on the Financial Conduct Authority's review of Royal Bank of Scotland's treatment of customers referred to its Global Restructuring Group* (8 November 2016)

88 “*RBS accused of mistreating businesses in leaked report*”, BBC, 25 August 2017

public disclosures from the report. The balance has tipped firmly in favour of full publication, and I urge you to secure the approval of RBS to do so, without delay.⁸⁹

60. The FCA declined, arguing that the public interest would not be best served by publication.⁹⁰ Instead, it published an interim summary of Promontory's report in October 2017.⁹¹ In the interest of transparency, the Committee requested that the FCA provide the Promontory report and other relevant documents to the Committee's Specialist Advisers, Andrew Green QC and Fraser Campbell. The advisers were asked to report to the Committee on whether the FCA's interim summary contained a fair and balanced account of the findings of the Promontory report.⁹² They concluded that the FCA's interim summary met that condition, but recommended a number of drafting changes which were accepted by the FCA and reflected in its final summary of the Promontory report, published on 28 November 2017.⁹³

61. In evidence to the Committee on 30 January 2018, RBS confirmed that it would not object to the FCA publishing the Promontory report.⁹⁴ The Chair therefore wrote to the FCA on 7 February 2018 requesting that the final, unredacted report be published by Friday 16 February or, if that proved impossible, the report be sent to the Committee Clerk by the same date.⁹⁵ In his response on 9 February 2018, Andrew Bailey set out the legal constraints that made publication by that date "highly unlikely".⁹⁶ Owing to these constraints, the report was sent to the Clerk on 16 February, and published by the Committee on 20 February. Commenting on the publication, the Chair said:

The Committee has not taken the decision to publish lightly. Normally, reports prepared under section 166 are confidential, but there is overwhelming public interest in bringing transparency to what happened at GRG, given the earlier leak of the report, and in ensuring that everyone can see, and know that they are seeing, an authentic and verified copy of Promontory's original report.⁹⁷

62. Phase two of the FCA's investigation did not take place in the manner originally envisaged. Instead of commissioning Promontory to carry out the work, the FCA itself began a "focussed investigation". On 31 July 2018, the FCA published an update on this work, which stated:

... we do not consider that prohibition proceedings brought in relation to any member of GRG senior management, in role during the relevant period, would have reasonable prospects of success.

89 [Letter from Chair of the Treasury Committee to Chief Executive of the FCA](#) (4 September 2017)

90 [Letter from Chief Executive of the FCA to Chair of the Treasury Committee](#) (11 September 2017)

91 Financial Conduct Authority, [Interim Summary, A report on an independent review of Royal Bank of Scotland Group's treatment of small and medium-sized enterprise customers referred to the Global Restructuring Group](#) (23 October 2017)

92 Treasury Committee, [Terms of Reference for Specialist Advisers Review of the Promontory Report](#)

93 Financial Conduct Authority, [Final Summary, A report on an independent review of Royal Bank of Scotland Group's treatment of small and medium-sized enterprise customers referred to the Global Restructuring Group](#) (28 November 2017)

94 [Oral evidence taken on 30 January 2018, HC \(2017–19\) 737, Q216](#)

95 [Letter from Chair of the Treasury Committee to Chief Executive of the FCA](#) (7 February 2018)

96 [Letter from Chief Executive of the FCA to Chair of the Treasury Committee](#) (9 February 2018)

97 ["Treasury Committee publishes RBS-GRG report", Treasury Committee press release](#), 20 February 2018

We did not find evidence of dishonesty or lack of integrity. The absence of regulatory rules against which the performance of senior management within GRG could be measured, in the context of the environment at the time and in all the circumstances, means we do not think a successful competence and capability case could be brought.⁹⁸

63. Responding to the FCA’s announcement that no disciplinary action would be taken, the Chair of the Committee noted that those affected by GRG will find the decision “deeply disappointing and bewildering”.⁹⁹ The FCA will publish a fuller account of its findings with respect to GRG in due course.

64. The fact that commercial lending is largely unregulated, and thus the absence of regulatory rules against which to assess GRG’s treatment of SMEs means that the FCA lacks the power to take disciplinary action, such as imposing fines on RBS or individuals. While the FCA has the power to ban individuals from the financial services industry if it considers them not to be fit and proper, it concluded that it would not be able to bring a successful case against any of GRG’s senior management. The Senior Managers and Certification Regime—which came into force in 2016 and is discussed in more detail later in this chapter—was not in place during the period covered by the FCA’s GRG investigation. This regime introduced stricter conduct standards and greater levels of personal accountability, and also allows the FCA to fine senior managers in relation to unregulated activity, where appropriate. However, these rules cannot be applied retrospectively to GRG.

The regulation of SME lending

The regulatory perimeter

65. Not all financial services are regulated, and those that are not are often described as “outside the regulatory perimeter”. At the Committee’s request, Andrew Bailey wrote to the Committee on the FCA’s powers and the regulatory perimeter in January 2018. The letter gave an overview of the FCA’s regulatory framework, as well as the regulatory position with respect to lending to SMEs:

Certain types of financial services activity require a licence or “permission” before that can be carried on.

[...]

The activities are described at a high-level in the Financial Services and Markets Act 2000 (FSMA) [...] We usually refer to such activities simply as “regulated activity” or as being within the “FCA’s perimeter”.

Much of the regulatory framework set out in FSMA, and most of the FCA’s powers, are targeted at regulating the conduct of this activity.

[...]

98 Financial Conduct Authority, *Statement on further investigative steps in relation to RBS GRG* (31 July 2018), p 14
 99 *“RBS escapes action over controversial GRG unit”*, BBC News, 31 July 2018

In contrast to mortgage lending and consumer credit activity, commercial lending is not a regulated activity. In other words, a person lending money commercially does not need to be authorised by the FCA (unless the lending constitutes “consumer credit”). So some lenders are therefore completely outside the scope of FCA regulation. Banks, on the other hand, are regulated by the FCA (because they are deposit-takers), but the FCA’s interest is primarily in the extent [to] which the banks’ activity outside “the perimeter” is relevant to the banks’ standing as a deposit taker.

[...]

Engaging in the sort of restructuring activity conducted by GRG is not of itself regulated activity. Our detailed conduct rules on the design and governance of products and services do not apply.¹⁰⁰

66. Further detail on the regulatory protection afforded to SMEs is given in the FCA’s discussion paper “*Our approach to SMEs as users of financial services*” published in November 2015:

Although many financial services provided to SMEs are within this regulatory perimeter, lending to SMEs for business purposes is mostly outside the regulatory perimeter. For example, unsecured lending to an SME borrower for the purposes of their business will only be regulated if the SME is unincorporated and the amount being borrowed is £25,000 or less ...¹⁰¹

67. The fact that commercial lending is outside the regulatory perimeter effectively means that there are no detailed FCA rules governing how that activity should be carried out. It also means that the majority of the FCA’s Principles for Business do not apply. These principles are a general statement of the fundamental obligations of firms under the regulatory system. The table below lists the principles, and indicates those that apply to unregulated activities, such as lending to SMEs.

Table 2: FCA Principles for Business

Principle	Description	Applicable to unregulated activity?
1 - Integrity	A firm must conduct its business with integrity.	No
2 - Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.	No
3 - Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.	Yes
4 - Financial prudence	A firm must maintain adequate financial resources.	Yes
5 - Market conduct	A firm must observe proper standards of market conduct.	No

100 [Letter from Chief Executive of the FCA to Chair of the Treasury Committee](#) (30 January 2018)

101 Financial Conduct Authority, [Our approach to SMEs as users of financial services, DP1517](#) (November 2015), p12

Principle	Description	Applicable to unregulated activity?
6 - Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.	No
7 - Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.	No
8 - Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.	No
9 - Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.	No
10 - Clients-assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.	No
11 - Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.	Yes

Source: FCA Principles for Business, FCA Handbook

68. In its report on events at GRG, Promontory described the regulatory protections for SMEs as “limited”, adding that “the FCA should work with the government and other relevant parties to extend the protections available to SME customers”.¹⁰²

Awareness of the lack of regulatory protection

69. When borrowing money, many SMEs do not appreciate the limited nature of the regulatory protections afforded to them. For many, there is an assumption that regulatory protection exists. Ian Smith, Chief Financial Officer at CYBG, told the Committee:

Anecdotally, what we hear when we talk to [SME] customers is that they have a perception that there is some kind of protection available. It is only when it is tested, when they are disappointed, that they find out that it is not.¹⁰³

This view was shared by other witnesses. The SME Alliance noted in its written submission that “most SME owners don’t realise they have no protection until it’s too late”,¹⁰⁴ and Suren Thiru told the Committee that “there is not a great awareness” amongst SMEs of the lack of regulation.¹⁰⁵

102 Promontory, *RBS Group’s treatment of SME customers referred to the Global Restructuring Group* (September 2016), para 7.19

103 Q228

104 [SME Alliance \(SME 0026\)](#)

105 Q153

Past consideration of SME lending regulation

70. Decisions on what is regulated are for Parliament and Government. The original decision to place SME lending largely outside the regulatory perimeter was made primarily on the basis that SMEs are more sophisticated than individual consumers (and therefore warrant less regulatory protection), and that regulation may lead to a reduction in the supply of credit to SMEs. In evidence to the Committee, Andrew Bailey recalled the debates that took place when the regulatory perimeter was initially established in FSMA 2000:

You have to go right back to the 1997 and 1998 debates on the FSMA legislation for this. There was a view at that time that SMEs should be kept outside the regulatory net to encourage innovation, and that they could fend for themselves; I am paraphrasing. Sadly, I think, experience has shown that that is not justified.¹⁰⁶

Howard Davies, who was Chairman of the Financial Services Authority (the predecessor to the FCA) when FSMA 2000 entered into force, also discussed these deliberations in evidence to the Committee:

I was chairman of the FSA when the Financial Services and Markets Act was put in place in 2000. Consideration was given to this at the time. At the time, the judgment made by the Government was that to paint small business banking with a regulatory paintbrush might make provision of services more costly, might make the whole market seize up, because the regulatory controls around know your customer, treating customers fairly and all that would impede the small business market. A decision was made at that time, which still remains the case, that small business lending should not be part of the regulated activity.¹⁰⁷

71. The Committee has seen no evidence that the question of whether SME lending should be within the regulatory perimeter was subject to detailed public debate at that time, however. The Government's February 1999 consultation on regulated activities does not seek views on the regulation of SME lending.¹⁰⁸

Should SMEs be expected to "fend for themselves"?

72. The Committee received a number of submissions suggesting that it is wrong to badge all SMEs as financially sophisticated and for lending to SMEs to be largely unregulated on that basis. The Serious Fraud Office told the Committee:

Some financial activity is not designated as regulated activity on the basis that the parties are financially sophisticated and do not require additional protection. This can lead to vulnerable people being exposed to risk. For example, financial lending to Small and Medium Enterprises (SMEs) is not regulated. However, many owners of SMEs are far from being sophisticated or experienced investors and this leaves them exposed to potentially

106 [Oral evidence taken on 7 February 2018, HC \(2017–19\) 475, Q196](#)

107 [Oral evidence taken on 30 January 2018, HC \(2017–19\) 737, Q207](#)

108 HM Treasury, Financial Services and Markets Bill, Regulated Activities - A Consultation Document (February 1999)

dishonest high risk or otherwise inappropriate lending practices and products, without the protection afforded by regulation. They may have their own businesses, but their personal expertise may be in a completely different field, from hairdressing to farming. The SFO has seen cases where business owners have been induced into entering into highly risky financial transactions, without the protection offered by the activity being regulated.¹⁰⁹

73. The FCA, too, recognises that many SMEs are no more financially sophisticated than everyday consumers, yet may often be required to engage with financial products that are complex. Its 2015 Discussion Paper entitled “*Our approach to SMEs as users of financial services*” notes:

Across regulated industries, SMEs have traditionally been treated as having greater self-sufficiency and bargaining power than individual consumers. So they have often been seen by regulators as requiring less assistance than these, even though their needs, behaviour and expertise are often similar. Our own work has shown that SMEs can experience poor outcomes in a wider range of situations. They can be exposed to risk at the point of purchase due to product complexity, limited choice or poorly managed expectations. When things go wrong, some struggle to navigate the complaints and claims processes or to obtain redress.¹¹⁰

The Financial Services Consumer Panel expressed a similar view in its written submission, noting that:

Consumer protection regulation in general assumes that a consumer, merely because he or she is engaged in business, is more financially sophisticated and thus does not need the same levels of protection as an individual. Whilst this may be reasonable at the larger end of the SME spectrum, the small business consumer is often simply an individual consumer wearing a business hat, and needs the same protection as an individual.¹¹¹

74. Given the varying levels of financial sophistication within the SME community, Promontory argued in its report on events at GRG that “policies and practices for the SME sector need to be based at least in part on an appreciation of differing customer capabilities, if the SME customer is to be treated fairly”.¹¹²

75. The consumer-like nature of many SMEs is also demonstrated by the fact that, for many, the business’s finances are closely linked to the personal finances of the owner. On this subject, the Promontory report stated that “The fate of the business and the personal finances and working lives of their owners are often so closely intertwined”.¹¹³ The interconnection between business and personal finances arises for a number of reasons. The Promontory report highlights the corporate structure of many small businesses—specifically the lack of independent shareholders and the prevalence of owner managers—

109 [Serious Fraud Office \(ECR0038\)](#), para 48

110 Financial Conduct Authority, [Our approach to SMEs as users of financial services, DP15/7](#) (November 2015), p 9–10

111 [Financial Services Consumer Panel \(SME 0014\)](#)

112 Promontory, [RBS Group’s treatment of SME customers referred to the Global Restructuring Group](#) (September 2016), para 7.18

113 Promontory, [RBS Group’s treatment of SME customers referred to the Global Restructuring Group](#) (September 2016), para vii

as an important contributor.¹¹⁴ In its written submission, ICAS also notes the “prevalence of personal guarantees required by banks” when lending to SMEs.¹¹⁵ In addition, in some cases a business loan may be secured against the business owner’s home.

76. Given this interconnectedness, the implications of mistreatment can spread beyond the business itself, potentially leading to lost livelihoods, lost homes, and bankruptcy, much like in the consumer banking sphere. Indeed, in the case of GRG, there are a number of examples of SMEs being mistreated, and the owners of those businesses suffering significant personal hardship as a result. During the Commons debate on “*RBS Global Restructuring Group and SMEs*” on 18 January 2018, a number of Members described the way in which SME banking misconduct had affected their constituents. Mr William Wragg MP said:

Just one such example of malpractice was the forced liquidation in 1998 of Pickup and Bradbury Ltd, a company formerly owned by a constituent of mine, Mr Eric Topping. [...] It was a business customer of RBS and, like many other businesses, used an overdraft to manage its cash flow. In 1998, the overdraft was £345,000—not an unreasonable amount for a business of that scale—and the company had been happily trading and growing under that arrangement for several years. Then, in February 1998, RBS wrote to Mr Topping saying that it wanted to reduce the overdraft facility to £200,000 and, moreover, that the company owed the bank over £700,000—a figure that is still in dispute today.

Unable to operate under more restrictive conditions, the company was moved into RBS’s Global Restructuring Group, according to RBS, to help it to repay the money it owed. While under the administration of the GRG, the bank’s advisers consistently undervalued the company’s assets, while simultaneously overvaluing its liabilities, to support its claim the company was unviable and, in July 1998, it forced Pickup and Bradbury into receivership. The GRG engineered the fall of the company by demanding aggressive repayment plans and allowing insufficient time for company directors to appoint independent valuers to prove the worth of the company’s assets and its solvency.

[...]

This scheme was organised fraudulent asset stripping on a massive scale, leading to the forced liquidation of many businesses—companies that people had poured a lifetime of effort into and which were their livelihoods. In the case of my constituent and many others, those businesses were their nest eggs for retirement. [...] Mr Topping, and hundreds of business owners like him, are just such hard-working people, yet they have had their assets stripped by RBS and now have very little to show for it.¹¹⁶

114 Promontory, *RBS Group’s treatment of SME customers referred to the Global Restructuring Group* (September 2016), para 2.2.67

115 ICAS (SME 004) para 4.1.3

116 HC Deb, 18 January 2018, [col 1093](#) [Commons Chamber]

Bob Stewart MP described how one of his constituents saw his “life’s work ... taken away from him” and his “father and step-mother ... evicted from their home”, leaving the whole family facing “complete wipe out”.¹¹⁷ Bill Esterson MP said:

What happened at RBS GRG was nothing short of a scandal and a disaster for the victims. Businesses were ruined, families were torn apart and people took their own lives.¹¹⁸

The Government’s position on the regulation of SME lending

77. The Economic Secretary told the Committee that “We ... have to be future-orientated and make sure that we have regulation and a regime in place that puts people’s minds at rest going forward”.¹¹⁹ The Minister was asked whether he thought there was a case for bolstering the regulation of SME lending; in response, he noted the Treasury’s desire to consider the outcome of four external pieces of work before forming a view on the issue.¹²⁰ Those external pieces of work are described in the table below.

Table 3: External initiatives referenced by the Minister

Initiative	Description
The FCA’s consultation on SME access to the Financial Ombudsman Service.	A consultation on proposed new rules to allow more SMEs to refer disputes to the Financial Ombudsman Service
Richard Lloyd’s independent review of the Financial Ombudsman Service.	A review of the Financial Ombudsman Service, prompted by concerns that some of its staff were not behaving appropriately and fulfilling the organisation’s legal duty as they should.
Simon Walker CBE’s UK SME Complaints and Resolution Review, commissioned by UK Finance.	A review of the scale and complexity of banking complaints from SMEs, focusing on disputes between financial services providers and SMEs that remain unresolved through the normal customer complaint procedure and may be unsuitable for court processes.
The Fair Business Banking for All report produced by the All Party Parliamentary Group on Fair Business Banking.	Research examining the best way of establishing an independent resolution mechanism for complex financial disputes.

Source: FCA, FOS, UK Finance, APPG for Fair Business Banking

These pieces of work are primarily concerned with redress and dispute resolution for SMEs; an important issue considered in the next chapter of this report, but one that is distinct from the regulation of SME lending. The outputs from the majority of these initiatives do not contain, or are not expected to contain, a detailed analysis of the case for bringing SME lending within the regulatory perimeter.

117 HC Deb, 18 January 2018, [col 1101](#) [Commons Chamber]

118 HC Deb, 18 January 2018, [col 1124](#) [Commons Chamber]

119 Q254

120 Q275

Voluntary codes and the Senior Managers and Certification Regime

78. The Senior Managers and Certification Regime (SMCR) seeks to make individuals working in the financial services industry more accountable for their conduct and competence. This is achieved by requiring firms to allocate certain responsibilities to specific individuals and to certify that certain employees are “fit and proper”. The regime also requires all non-ancillary staff within firms to adhere to a number of high-level conduct rules. The fifth of these conduct rules states that “*You must observe proper standards of market conduct*”.¹²¹ In a recent Policy Statement, the FCA noted that:

All of the Individual Conduct Rules apply to both regulated and unregulated activities that individuals working for these authorised firms undertake in the course of their employment. For regulated activities, regulatory rules and requirements are the key determinant of proper standards of market conduct. For unregulated activities, firms and individuals must use their judgement to determine what ‘proper standards of market conduct’ are. FCA Guidance explains that market codes are one place (but not the only place) they may look to make such a determination.¹²²

79. This means that, under the SMCR, the FCA can take enforcement action against relevant individuals who fail to observe proper standards of market conduct in relation to unregulated activities. The FCA has introduced a process for “recognising” certain industry codes to give staff comfort that by complying with the code(s), they will be meeting their obligations under conduct rule five (“You must observe proper standards of market conduct”). The FCA argues that this “gives an incentive to follow recognised codes and to improve their standards of conduct in relevant unregulated markets”.¹²³ It also notes, however, that it does “not intend to directly supervise compliance with market codes” and that it will “not take action based solely on a breach of provisions in market codes”.¹²⁴

80. Andrew Bailey told the Committee that using the SMCR and industry codes of conduct is “a way to get to the same place [as extending the regulatory perimeter]”, but also noted that “if [it] ... does not work we really are back to extended perimeter”.¹²⁵ Mr Bailey has been critical of industry codes in the past, however. He told the Committee in October 2017:

The history of industry standards and codes is not brilliant, frankly. They tend to get put together in great waves of enthusiasm, then sit on shelves. Things go wrong and they are pulled down ...¹²⁶

121 Financial Conduct Authority, [Code of Conduct, Chapter 2, Individual conduct rules](#)

122 Financial Conduct Authority, [Industry Codes of Conduct and Feedback on FCA Principle 5, PS18/18 \(July 2018\), para 1.12](#)

123 Financial Conduct Authority, [Industry Codes of Conduct and Feedback on FCA Principle 5, PS18/18 \(July 2018\), para 3.2](#)

124 Financial Conduct Authority, [Industry Codes of Conduct and Feedback on FCA Principle 5, PS18/18 \(July 2018\), p 8–9](#)

125 [Oral evidence taken on 13 June 2018, HC \(2017–19\) 475, Qq344–345](#)

126 [Oral evidence taken on 31 October 2017, HC \(2017–19\) 475, Q90](#)

81. The FCA also sought the views of industry on a proposal to apply its fifth Principle for Business—that a firm must observe proper standards of market conduct—to unregulated activities.¹²⁷ Doing so would allow the FCA to take enforcement action against firms for breaches of the Principle, which would be distinct from its ability to take action against *individuals* for failing to observe proper standards of market conduct under the SMCR. Feedback from industry suggested that applying the principle to unregulated activities would, amongst other things, increase costs for firms. In light of this feedback, the FCA decided against pursuing the proposal further.¹²⁸ This leaves what the FCA itself describes as a “possible anomaly”, whereby all the staff within an authorised firm are required to observe proper standards of market conduct in unregulated activities, but the firm itself is not.¹²⁹

Conclusions and Recommendations

82. **The length of time taken by the FCA to investigate events at RBS’s Global Restructuring Group has left those who saw their livelihoods destroyed understandably incensed. The Committee shares their concerns.**

83. **The FCA is not taking enforcement action against the perpetrators of the misconduct at GRG, but this must not be interpreted as a “not guilty” verdict. SME customers were treated appallingly, and because of shortcomings in regulation this mistreatment is likely to go unpunished. The Committee views this inaction as a damning indictment of the regulatory regime and a sad reflection of its inadequacies. GRG exemplifies a regulatory framework that is failing the UK’s small businesses.**

84. **The FCA itself concedes that the failures at GRG might ordinarily have triggered disciplinary action had they occurred in a regulated business. That we have a regime in place that allows this sort of behaviour to take place with impunity is simply unacceptable. The victims of misconduct—who have seen those that destroyed their businesses go unpunished—rightly expect change.**

85. **Experience has shown that the justification for leaving commercial lending outside the regulatory perimeter is feeble, and it is unclear whether this issue was subject to sufficient public debate when the regulatory perimeter was first established. Many small business owners are no more financially sophisticated than everyday consumers, yet they will often be required to engage with relatively complex financial products. They may also lack the resources to purchase the appropriate advice or expertise externally. To deprive them of regulatory protection because of an assumed universal sophistication is wrong, and this unfairness is compounded by the fact that most SMEs are unaware of the regulatory position. In addition, the interconnection between personal finances and business finances can mean that the potential for personal catastrophe due to SME banking misconduct is significant. The Treasury and the FCA should introduce a regulatory regime that protects SMEs. The scope of the regime must**

127 Financial Conduct Authority, [Consultation Paper on Industry Codes of Conduct and Discussion Paper on FCA Principle 5, CP17/37 \(November 2017\)](#)

128 Financial Conduct Authority, [Industry Codes of Conduct and Feedback on FCA Principle 5, PS18/18 \(July 2018\)](#), p 24

129 Financial Conduct Authority, [Industry Codes of Conduct and Feedback on FCA Principle 5, PS18/18 \(July 2018\)](#), para 4.2

be based on an appreciation of the varying levels of financial sophistication within the SME community. This will require analysis of the financial sophistication of the UK's SMEs that goes beyond blunt metrics covering headcount and turnover.

86. The Committee recognises that bringing commercial lending within the regulatory perimeter will not be a 'silver bullet'. But doing so would afford the FCA a significant amount of discretion as to how to design and implement a regulatory regime. This regime would need to be proportionate—taking account of the potential impact on the supply of credit to SMEs—and targeted at those SMEs that show the greatest need for additional protection.

87. The FCA's plans to drive up conduct standards in the SME lending market by using industry codes of conduct will not provide SMEs with the protection they need. The idea is untested and, as Andrew Bailey acknowledges, industry codes do not have a track record of success. Firms cannot be compelled to sign up to voluntary codes of conduct, and the FCA's initiative may lead to these codes being watered down if they are drafted in the knowledge that they may be enforced against in future.

88. Mr Bailey told the Committee that if the initiative does not work, the regulatory perimeter will need to be reconsidered. The Committee considers it unwise to take a 'wait and see' approach; the authorities should get on the front foot by taking action that they know will provide adequate protection to SMEs. It is clear that extending the regulatory perimeter is now necessary. Waiting for another high-profile misconduct scandal before pursuing it would be irresponsible. This episode has raised wider questions about the perimeter of regulation, which the Committee continues to consider.

4 Redress

The Financial Ombudsman Service

The ability of SMEs to access the Ombudsman

89. The Financial Ombudsman Service (FOS) provides an independent dispute resolution service covering a wide range of financial products. It is designed to resolve disputes quickly and with minimal formality, reaching decisions on the basis of what it considers to be fair and reasonable. Currently only individuals and micro-enterprises are able to refer disputes to the FOS. A micro-enterprise is defined as an enterprise which employs fewer than ten people and has a turnover or annual balance sheet of €2 million or less. However, in January 2018 the FCA began consulting on proposals to give more SMEs access to the FOS.¹³⁰ Its consultation paper noted that “some SMEs, particularly smaller businesses, struggle to resolve disputes with financial services firms through the courts and have few alternative routes to seek redress”.¹³¹

90. The British Chambers of Commerce told the Committee it was:

[...] broadly supportive of the Financial Conduct Authority’s proposals for expanding SME access to the Financial Ombudsman service as for far too long firms have faced a real struggle to resolve disputes with their financial services provider. Access to such a service would also help provide firms with the confidence to go for finance in the first place if there is somewhere they can turn to if things go wrong.¹³²

91. In October 2018 the FCA published near-final rules that would create a new category of eligible complainant—“small business”—defined as:

[...] SMEs [...] below an annual turnover threshold of £6.5 million and below only one of either the headcount threshold of 50 employees or the balance sheet total threshold of £5 million.¹³³

FOS effectiveness and its ability to take on an expanded role

92. On 12 March 2018, Channel 4 aired an episode of ‘Dispatches’, in which journalists went undercover at the FOS. Channel 4 said that the investigation “found that staff with inadequate training or understanding of financial products are judging cases, with some having reached decisions in favour of the banks, without properly reading case files”.¹³⁴ Concerns surrounding the effectiveness of the FOS were also raised by witnesses giving evidence to this inquiry. Lawrence Tomlinson described the FOS as “a complete waste of time”,¹³⁵ and Cat MacLean, Head of Dispute Resolution at MBM Commercial, told the Committee:

130 Financial Conduct Authority, *Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services, CP18/3 (January 2018)*

131 Financial Conduct Authority, *Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services, CP18/3 (January 2018), para 1.1*

132 British Chambers of Commerce (SME 0017)

133 Financial Conduct Authority, *SME access to the Financial Ombudsman Service, PS18/21* (October 2018), p 11

134 “*Investigation at FOS finds staff with severe lack of training*”, Channel 4, 12 March 2018

135 Q113

The point I would like to make about the Financial Ombudsman Service is that it may work well for consumer issues where the issue is straightforward—where an individual has been charged for going over their overdraft limit and, as a matter of fact, they didn't. However, the kinds of claims that my clients have made before they come to me or that we make on their behalf—it is a mixture—seem just to be beyond the capability of those who deal with them at FOS. There seems to be a real difficulty understanding any of the complexities. I just do not feel that FOS is fit for purpose for the kinds of disputes we are talking about.¹³⁶

When asked about his confidence in the FOS, the Economic Secretary told the Committee that he was “concerned” and “keen to be reassured”.¹³⁷

93. In response to the Dispatches programme, the FOS commissioned an independent review to analyse the issues raised.¹³⁸ The review was carried out by Richard Lloyd, and its final report was published in July 2018. It found that the FOS “is not institutionally biased” against complainants, but concluded that its recent reorganisation was conducted at “too great a pace” with a damaging effect on confidence and morale. It also found that “new investigators can lack knowledge, confidence and consistent exposure to complex problems”.¹³⁹ The review made a number of recommendations to improve confidence in the quality of the FOS’s work and to ensure it is fit to handle larger SME complaints, as proposed by the FCA.

94. In its consultation paper on providing more SMEs with access to the FOS, the FCA originally proposed the changes take effect from 1 December 2018. When the Committee questioned the FCA on the feasibility of this timeline being met, Charles Randell, Chairman of the FCA, described the December target as “ambitious”.¹⁴⁰ Andrew Bailey and Mr Randell also explained that dealing with larger SME cases would require significant changes to the way the FOS currently operates:

Andrew Bailey: ...this will require a change in the way the Ombudsman does this sort of complex case. They are not currently in a position to do these sorts of cases.

[...]

Charles Randell: I would absolutely agree. It is right to regard this as a new activity that the Ombudsman would be carrying out. They would need a different set of processes. They would possibly need some different people to carry it out. That probably would require a different element to the oversight that both their own board and we perform in relation to the Ombudsman service.¹⁴¹

136 Q171

137 Q297

138 Financial Ombudsman Service, [Terms of reference for independent review](#) (25 April 2018)

139 Richard Lloyd, [Report of the Independent Review of the Financial Ombudsman Service](#) (July 2018)

140 [Oral evidence taken on 13 June 2018, HC \(2017–19\) 475, Q349](#)

141 [Oral evidence taken on 13 June 2018, HC \(2017–19\) 475, Q348](#)

95. The Chair of the Committee wrote to Andrew Bailey on 23 July to note the Committee's concerns over the FOS's readiness for taking on an expanded role. The letter stated that the expansion of the Ombudsman's remit should not be pursued at the expense of sound decision making and appropriate training and recruitment at the FOS, and asked that the FCA consider the findings of Richard Lloyd's review before coming to a final decision.¹⁴²

96. The FCA subsequently revised its proposed timeline for widening SME access to the FOS. In its October 2018 Policy Statement, it announced that it expects to finalise the rules that would bring about widened access to the FOS in December 2018, and that the changes will take effect from 1 April 2019.¹⁴³ The Policy Statement also provided further information on how the FOS would handle SME complaints, stating that:

The Ombudsman service will create a ring-fenced, specialist unit to handle complaints from SME customers under the proposed extended jurisdiction. Key components—to be in place from day 1—include:

A dedicated team of 20 SME investigators with specialist knowledge and skills, recruited internally and externally

Teams led and managed by people with specialist SME knowledge and experience, including specialist SME ombudsmen

Dedicated legal resource to support SME complaint handling and access to additional expertise and technical advice, eg forensic accountants or experts on novel or complex financial products and services

A panel of external experts to support the knowledge of the service's SME teams and provide access to sector expertise and insight

An SME advisory group with representatives from industry and small business sectors to provide helpful insight and support

Deployment of decision-making tools to ensure business size threshold tests for the new SME jurisdiction are applied consistently

A professional practice group and SME lead to develop the service's approach to SME cases, ensuring casework consistency and generating insight to feed back to industry and stakeholders

A dedicated microsite and phone-line for SME complainants.¹⁴⁴

97. Simon Walker CBE published his "Review into the complaints and alternative dispute resolution (ADR) landscape for the UK's SME market" on 23 October 2018, after being commissioned by UK Finance to conduct the review in March 2018.¹⁴⁵ The Committee would like to thank Mr Walker for making himself available to give oral evidence on the day of publication. Whilst recognising that the FOS "currently lacks the skill and specialisation to deal with complex financial disputes", the report recommends that "a

142 [Letter from Chair of the Treasury Committee to Chief Executive of the FCA](#) (23 July 2018)

143 Financial Conduct Authority, [SME access to the Financial Ombudsman Service, PS18/21](#) (October 2018), para 1.28

144 Financial Conduct Authority, [SME access to the Financial Ombudsman Service, PS18/21](#) (October 2018), p 15

145 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK's SME market](#) (23 October 2018)

separate division with a clear business identity and appropriate skills should be set up under the statutory umbrella of the existing FOS”, consistent with the FCA’s proposal.¹⁴⁶ The report goes on to provide further detail on the proposed FOS expansion:

The Financial Ombudsman Service does not currently—perhaps understandably—look or behave as if helping business is its principal focus. A business and banking ombudsman pillar within the FOS framework needs to present itself very differently if it is to win the confidence of the SME community. It should be possible to do so, with personnel changes and re-training.

Other parts of the Ombudsman or small business infrastructures, including Ombudsman Services and the Small Business Commissioner, should be involved in helping to create and strengthen the banking ombudsman facility as a separate division of the FOS.

An expert and specialist advisory body involving senior legal, banking and business practitioners should be set up in order to consult and advise on technical legal and banking issues and to give guidance on business mass claims.

I entirely support the changes proposed to the scope of the Financial Ombudsman Service in the FCA’s consultation paper and believe they should be implemented in full for the proposed banking ombudsman facility.¹⁴⁷

When questioned by the Committee about the feasibility of introducing these changes by the second half of 2019 as proposed, Mr Walker recognised that his recommendations are “extremely ambitious”.¹⁴⁸

Voluntary redress schemes for SMEs

98. In response to findings that SME customers have been treated inappropriately, the FCA has sought to establish a number of voluntary complaints and compensation schemes. Some examples of these are discussed below.

IRHP scheme

99. Interest Rate Hedging Products (IRHP) are a type of derivative contract sold by banks with the purpose of allowing firms with business loans to hedge against the risk of interest rate movements. Businesses with IRHPs typically pay for their loan separately from the IRHP. The IRHPs can provide interest rate protection to a business by creating a separate set of payments to and from the business that offset the variability of the interest rate paid on the underlying loan. IRHPs are regulated by the FCA as Contracts for Difference.

146 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 2

147 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 60

148 Q361

100. In June 2012 the FCA's predecessor body, the Financial Services Authority (FSA), announced that it had found "serious failings in the sale of IRHPs to some small and medium sized businesses".¹⁴⁹ The FSA identified a range of poor practices, particularly in relation to more complex IRHPs, including: poor disclosure of exit costs (which could exceed 40 per cent of the value of the underlying loan); failure to ascertain customers' understanding of risk; "over-hedging", whereby the amounts and/or duration did not match the underlying loan; and inappropriate sales incentives.

101. In discussion with the FSA, nine banks agreed to conduct a review and redress exercise for IRHPs sold to "non-sophisticated" customers since 2001.¹⁵⁰ The intention of the exercise, according to the FSA, was to pay "fair and reasonable redress [such] that the customer be put back into the position they would have been if there had not been such a breach of the Regulatory Requirements".¹⁵¹ These requirements—which flowed from the inclusion of IRHPs in the Regulated Activities Order (as a type of Contract for Difference)—included that firms must be fair, clear and not misleading in their communications (taking into account the nature of the client and of its business), and that, in respect of retail clients, firms must act honestly, fairly and professionally in accordance with clients' best interests.¹⁵²

102. To guard against the conflicts of interest inherent in the banks investigating whether they had mis-sold IRHPs, and assessing the amount of compensation due if they had, the process in each bank was overseen by independent reviewers appointed under s166 FSMA.

103. The agreements reached between the banks and the FSA were not published at the time the IRHP review commenced. The FCA initially resisted the previous Treasury Committee's requests for sight of these agreements.¹⁵³ It eventually disclosed them to the Committee after securing permission from the banks concerned under s348 FSMA, and the Committee published a generic version.¹⁵⁴

104. The review considered over 20,000 products sold to non-sophisticated customers. 14,000 redress offers were accepted, with redress totalling £2.2 billion. In 40 per cent of cases, customers were offered an alternative IRHP product.¹⁵⁵ The Treasury Committee in the 2010–15 Parliament concluded that there was "inconsistency" in the decision-making between different banks participating in the redress process, and that some non-

149 Financial Services Authority, [Interest rate hedging products: information about our work and findings](#) (June 2012)

150 The definition of a sophisticated customer was deemed to be those with an aggregate annual turnover of "over £6.5 million net (or £7.8 million gross)", along with either an aggregate balance sheet total of "more than £3.26 million net (or £3.9 million gross)", or more than 50 employees. Customers were also deemed to be sophisticated if the aggregate notional value of "all live (i.e. not matured) IRHPs" held by the customer immediately after the IRHP sale exceeded £10 million. This was a definition agreed between the FSA and the banks that is not based on the legal definition of sophistication.

151 Financial Services Authority, [Letter from Director of Supervision to banks](#) (29 January 2013)

152 [Footnote 9 on p.12](#) of the FSA's IRHP Pilot Findings, published in January 2013, lists the rules that the regulator considered to be applicable.

153 [Oral evidence by John Griffiths-Jones to the Treasury Committee, 9 September 2014](#), Qq 168- 169; [Oral Evidence by John Griffiths-Jones to the Treasury Committee, 10 February 2015](#), Qq 2-6

154 [Agreement relating to past sales of interest rate hedging products](#) (June 2012)

155 Financial Conduct Authority, [Progress of sales through stages of the review as at 30 September 2016](#)

sophisticated customers may have been excluded from the review. It also criticised the FCA for failing to produce information that would enable an assessment of whether the review had systemic failures.¹⁵⁶

The GRG scheme

105. Following the completion of the skilled persons' review of the treatment of SME customers in GRG, RBS agreed with the FCA that it would automatically refund certain complex fees charged to customers, and that it would establish a new complaints process.

106. RBS provisioned £400 million for the scheme. The automatic refund process paid out £115 million to around 3,500 customers. At the time of writing, a total of £10.7 million has been offered to cover 'direct losses' arising from the mistreatment of GRG customers. Of this £10.7 million, £4.7 million had been paid out, as payments are only made when a customer's appeal is complete or the offer is accepted. Consideration of consequential loss claims is in its early stages.

107. The Committee has secured various improvements to the operation and transparency of the scheme, including publication of regular updates on complaint outcomes;¹⁵⁷ clarification of published information about the scheme, including the rights of former shareholders to make complaints;¹⁵⁸ and the independent oversight of consequential loss claims.¹⁵⁹

108. The Committee initially sought the view of Andrew Bailey on the merits of independent oversight of consequential loss claims. He wrote in a letter to the Chair that the high value and complexity of such claims may make them unsuitable for independent oversight. He added that "Being realistic the courts may be the most appropriate place to consider each side's arguments".¹⁶⁰ In response to a call from the Chair that RBS submit consequential loss claims to independent oversight, Mr McEwan highlighted Mr Bailey's remarks as a reason for declining the request.¹⁶¹ Following further correspondence from the Committee Chair, and a meeting with the Economic Secretary to the Treasury, RBS did, eventually, change its position.¹⁶²

Clydesdale TBL scheme

109. Between 2002 and 2012, Clydesdale plc, through both its own branches and through those operating under its trading name Yorkshire Bank, marketed loans that had similar features to interest rate hedging products under its Tailored Business Loan brand.¹⁶³ Over 8,000 such products were sold to 6,000 customers over the period.¹⁶⁴ Such loans

156 [Treasury Committee, Conduct and Competition in SME lending, Eleventh Report of Session 2014–15, HC 204, 10 March 2015](#)

157 [Letter from the Chief Executive of RBS to the Chair of the Treasury Committee](#) (13 March 2018)

158 [Letter from Chief Executive of the FCA to the Chair of the Treasury Committee](#) (28 November 2017)

159 [Letter from the Chief Executive of RBS to the Economic Secretary to the Treasury](#) (9 May 2018)

160 [Letter from Chief Executive of the FCA to the Chair of the Treasury Committee](#) (28 November 2017)

161 [Letter from the Chief Executive of RBS to the Chair of the Treasury Committee](#) (13 March 2018)

162 [Letter from the Chief Executive of RBS to the Economic Secretary to the Treasury](#) (9 May 2018)

163 Other banks, including Barclays, HSBC, Lloyds and RBS also sold such loans.

164 [Treasury Committee, Conduct and Competition in SME lending, Eleventh Report of Session 2014–15, HC 204, 10 March 2015](#)

are sometimes referred to as “loans with embedded swaps” and “loans with embedded IRHPs”. Unlike “standalone” IRHPs, these loans were not regulated by the FCA. However, the then Chief Executive of the FCA, Martin Wheatley, expressed concern that:

... a customer who has taken out a loan with an ‘embedded’ IRHP may be faced with exactly the same repayment features and exactly the same (potentially large) break costs that the customer would have faced had the customer taken out a loan and a standalone IRHP.¹⁶⁵

110. Clydesdale voluntarily reviewed past sales of some TBL products. Evidence submitted to the Committee in the 2010–15 Parliament showed that 81 per cent of products (all those in which the interest rate was fixed for the period of the loan or any part of it) were excluded from the review.¹⁶⁶ The Committee recommended that Clydesdale provide greater transparency about its review of TBLs.¹⁶⁷

Limitations on the FCA’s powers

111. The FCA does not have the legal power to require banks to establish redress schemes to compensate businesses, even when the conduct in question is regulated and the rules have been broken (as in the case of IRHPs). In a letter to the Chair, Andrew Bailey set out the legal position:

FSMA [the Financial Services and Markets Act 2000] gives the FCA the power to require regulated firms to establish and operate an industry-wide redress scheme under section 404 where the failure by firms would otherwise have given the consumer a right of action in court. Where the action relates to a breach of an FCA rule, rights of action under FSMA are limited to “private persons”. Incorporated businesses are therefore excluded in industry-wide consumer redress schemes based solely on a breach of our rules.¹⁶⁸

112. These legal constraints have led to the FCA seeking voluntary redress schemes in response to findings of inappropriate treatment of SMEs. In oral evidence, Mr Bailey discussed the problems with this approach:

I do sympathise with the complainants that you can of course never get away from the fact that, in this setup, the firm sets the scheme up. The firm appoints the people who deal with it. Where we do get involved, we go to lengths to say that it has to be done robustly and it has to be done properly. We would be better off if we got away from that.

The second point I would make is that it just does not seem to be sensible that, every time one of these things happens, we have to set up something new. It would be much better if we had a standing scheme.¹⁶⁹

165 [Letter from the Chief Executive of the FCA to the Financial Secretary to the Treasury](#) (9 May 2013, published by the Treasury Committee)

166 [Written evidence to the Treasury Committee’s inquiry into Conduct and Competition in SME lending, SME0165](#)

167 [Treasury Committee, Conduct and Competition in SME lending, Eleventh Report of Session 2014–15, HC 204, 10 March 2015, para 161](#)

168 [Letter from Chief Executive of the FCA to Chair of the Treasury Committee](#) (30 January 2018)

169 [Oral evidence taken on 31 October 2017, HC \(2017–19\) 475, Q20](#)

Barriers to justice for SMEs

113. For many SMEs, going to court is the only option for settling disputes that cannot be resolved directly with the bank in question. The Committee heard, however, that SMEs face significant challenges when seeking to do so. One of the most significant is the cost associated with bringing legal action. In its written evidence, the FCA described litigation as “costly and time consuming” and noted that even well-resourced businesses may find it difficult to bring legal action as “disputes often coincide with cash flow stresses and other threats to the business”.¹⁷⁰

114. Some have argued that banks—who are likely to have access to much greater resources—are able to exploit the fact that SMEs may be unable to meet the costs of bringing legal action. Cat MacLean, Head of Dispute Resolution at MBM Commercial, told the Committee:

[The imbalance in resources between a large bank and a small business] is absolutely huge and very often insuperable ... if you have somebody who is essentially an individual—in business, but a very small SME—it is almost impossible [to litigate against a bank].

[...]

People who are embarking on trying to advance a claim against a bank need to understand that they have to be absolutely prepared, financially and emotionally, to take this right to the door of the court, and I mean literally the door of the court. It is not that financial institutions will never settle and never resolve, but generally speaking they like to try to play it out for as long as possible, in the hope that those individuals will give up—perhaps because they have run out of money and also because litigating for years and years is extraordinarily punishing.¹⁷¹

115. It is also argued that, regardless of costs, SMEs can struggle to obtain legal representation. In his article “Injustice in financial services disputes (Pt 1)”, Michel Reznik, President of IAA London, explains that “this is because many firms with the necessary expertise are pre-engaged by the banks through external legal advice panels”, and that “to be on the panels, the firms are required to sign detailed terms of engagement, which contain restrictive covenants preventing the firm from acting in any matter against the bank”.¹⁷² Cat Maclean told the Committee that “it is very hard for SMEs to find a firm that is not on a bank panel or isn’t hoping to be on a bank panel”.¹⁷³

116. Those SMEs that are able to bring legal action may face further challenges once those proceedings begin. LexLaw, a law firm, told the Committee that banks are able to shape financial services case law in a way that disadvantages SMEs via a process of “unnatural selection”. The firm described the process as follows:

170 [Financial Conduct Authority \(SME 0033\), para 5](#)

171 Qq160–161

172 Michel Reznik, [Injustice in financial services disputes \(Pt 1\)](#), *New Law Journal* (28 April 2017)

173 Q163

Banks use their greater financial resources and the burden of substantial legal costs to pressure smaller SMEs into giving up their legal claims, thereby leaving only the larger SMEs able to afford to go to trial (and, even then, with some difficulty).

At trial, the courts are more likely to decide that larger SMEs have similar commercial bargaining power as banks and, on that basis, set legal precedent that banks owe greatly limited duties (if any) to their customers.

Banks then use the accretion of case law favourable to them (together with their greater financial resources) to pressure smaller SMEs into giving up their legal claims, and so the cycle continues. This ultimately creates a barrier that hinders SMEs from seeking redress against banks through the courts.¹⁷⁴

117. Simon Walker notes in his review that “in any dispute between a financial institution and an SME, there is a massive power imbalance” and that “only the richest businesses can contemplate taking a bank to court”.¹⁷⁵

118. SMEs that are able to bring disputes to court are restricted further by the Financial Services and Markets Act 2000. In its written evidence, the FCA said:

... where SMEs do take disputes to court, their causes of action are much more limited than those available to individual consumers, even if the SME benefits from protections under our rules. This is because section 138D of the Financial Services and Markets Act 2000 (‘FSMA’) only gives a right of action for damages to ‘private persons’ where a firm breaches our rules. A company acting in the course of business does not meet this description. Instead companies must rely on the more limited causes of action available under the general law, e.g. for misrepresentation, breach of contract or negligence.¹⁷⁶

119. In his report “Fair Business Banking for All”, Kevin Hollinrake MP, Co-Chair of the All Party Parliamentary Group on Fair Business Banking, argues that “the best and simplest way to extend the legal rights of SMEs is, therefore, by extending the section 138D right of action”. He explained that doing so would give SMEs the ability to bring claims for breaches of rules in the FCA Handbook “and so would help to ensure that in future firms behave more responsibly towards their customers”.¹⁷⁷

The case for a Financial Services Tribunal

120. A number of those providing evidence to the inquiry argued for the creation of a Financial Services Tribunal (FST) as a means of reducing the barriers discussed in the previous section. In his article “Injustice in financial services disputes (Pt 3)”, Michel Reznik describes the proposed FST as:

174 [LexLaw \(SME 0039\), para 3](#)

175 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 2

176 [Financial Conduct Authority \(SME 0033\), para 6](#)

177 Kevin Hollinrake MP, [Fair Business Banking For All](#) (10 July 2018), p 9

...a permanent dispute resolution system that possesses four characteristics: that it is: (i) specialist; (ii) inexpensive; (iii) swift; and (iv) most importantly, that it operates the adversarial common law system [which] gives the litigants their day in court and gives them a voice to have their say and test the other side's case.¹⁷⁸

Like an employment tribunal, it is proposed that an FST would have an inquisitorial element to it. Richard Samuel, a barrister at 3 Hare Court who has written extensively on the FST proposal, described to the Committee how this would work in practice:

... what happens in a tribunal is not what happens in a court, where the judge just sits there—I am painting it in black and white, effectively, and rather unfairly to judges—and it is the lawyers and the parties who move. In a tribunal, there is a balance. The parties still move and take the points they want to take, but if the tribunal sees a point that it is interested in, it has a statutory power to say, “I want to look at this point”. The specific reason they have that is that many people who come before employment tribunals do not have lawyers, so they need a lawyer sitting on the tribunal to say, “Wait a minute, there is a point here that we need to be looking at to deal with this case fairly”.¹⁷⁹

121. In various contexts, tribunals seek to level the playing field where there exists an imbalance of power between disputing parties. Richard Samuel explained:

If you look at anything—in an employment tribunal, the employer is more powerful than the employee ... if it is the state versus an individual, for example at an immigration tribunal or a tax tribunal, you have got one enormous organisation called the state against the individual. The point is that the rules in a tribunal, and the culture that is built around those rules, have as a specific objective the flattening-out of the power imbalance that exists between the two parties, in order to give the weaker party proper access to justice.¹⁸⁰

122. It is argued that an FST would provide SMEs with greater access to justice, primarily by avoiding the high costs and slow pace associated with the court process. However, Andrew Green QC expressed doubt over the extent to which an FST would address the problems associated with the cost of bringing legal action. He argued that claims between £150,000 and £5 million are typically complex cases that require the instruction of lawyers, and that are likely to follow a process that is “very expensive”.¹⁸¹

123. In “Fair Business Banking for All”, Kevin Hollinrake MP sets out a suggested costs regime for the proposed FST that would remove the risk that an SME would have to pay bank's costs if they lose their case. He proposes a “no-costs except in cases deemed complex” regime, akin to that used by the Tax Tribunal. This would allow costs to be awarded only when the Tribunal is satisfied that the case is sufficiently complex, in recognition of the fact that complex cases may require legal or accounting input, the costs of which claimants

178 Michel Reznik, *Injustice in financial services disputes (Pt 1)*, *New Law Journal* (28 April 2017)

179 Q193

180 Q167

181 Q168

might want to recover.¹⁸² It is also suggested that the FST's costs regime could be subject to "qualified one-way cost shifting", whereby SMEs would be able to recover their costs (subject to a cap), while banks would not. Richard Samuel succinctly explained a tribunal system's costs regime, telling the Committee "if you lose, you do not have to pay the other side's costs ... That means you can bring litigation without betting the company".¹⁸³ On the subject of speed, Cat MacLean told the Committee that tribunals offer "a simplified process and procedure [that] is much more fast-track" than the High Court.¹⁸⁴

124. In addition to providing greater access to justice for SMEs, the creation of an FST could also yield benefits for the financial services industry itself. Writing in the *Capital Markets Law Journal*, Richard Samuel notes that an FST would reduce regulatory uncertainty by providing "definitive interpretations of regulations (including the FCA Handbook)", leading to supply-side efficiencies. He also argues that, by reducing the costs associated with dispute resolution, an FST would lead to increases in international demand for credit supplied from England.¹⁸⁵

125. The Committee also explored whether the creation of a tribunal could lead to improvements to the culture of the banking sector. Richard Samuel argued that an FST would have that effect, primarily by ensuring that victims of misconduct are able to "have their story heard in public and to have it ruled on according to the law".¹⁸⁶ Andrew Green QC argued to the contrary, noting that "If the regulator imposing fines to the tune of hundreds of millions of pounds hasn't changed the culture, the idea that a financial services tribunal will do so seems to me to be a little unrealistic".¹⁸⁷ Cat Maclean, however, told the Committee that an FST could be more effective than fines in driving cultural change:

I ... think that if a bank is fined, it does not really have an impact on the individuals within that bank who are carrying out the day-to-day banking work ... The kind of threat that a tribunal system and the laying of evidence will have will really help to drive the cultural change that banks need.¹⁸⁸

126. In its October 2018 Policy Statement on SME access to the FOS, the FCA reiterated its support for the creation of an FST, saying:

We have publicly stated our support for a tribunal that could deal with disputes that fall outside the ombudsman service's remit. We see a role for both an extended ombudsman service and a tribunal, as they meet different needs. For example, the ombudsman service's expertise lies in providing a quick and informal process for financial services disputes. A tribunal, on the other hand, would provide a more formal, courtlike approach for some higher value disputes, or disputes involving complainants above the ombudsman service's eligibility thresholds.¹⁸⁹

182 Kevin Hollinrake MP, *Fair Business Banking For All* (10 July 2018), p 52

183 Q193

184 Q192

185 Richard Samuel, "The FCA has now listened: Banks, it is in your interests to listen too", *Capital Markets Law Journal*, Volume 13, Issue 1, 16 January 2018

186 Q206

187 Q206

188 Q206

189 Financial Conduct Authority, *SME access to the Financial Ombudsman Service, PS18/21* (October 2018), p 9

Andrew Bailey also described the procedural differences between the FOS and a tribunal in a letter to Kevin Hollinrake in September 2018:

A tribunal could also meet the demand of some complainants to have their ‘day in court’. While the Ombudsman can hold oral hearings, it does not generally do so. The Ombudsman does not have the power to compel the attendance of witnesses, take evidence on oath or test evidence by cross-examination.¹⁹⁰

127. Supporters of the FST proposal argue that it would fill a gap in the market for dispute resolution. Richard Samuel notes that “there is a large gap for effective dispute resolution in the ‘mid-market’ into which disputes between financial institutions and small and medium enterprises fall”.¹⁹¹ Simon Walker’s review also identified this gap in the market, noting that “implementing the proposals outlined in the FCA’s consultation will leave a technical gap for companies with turnover above £6.5m per annum but still below £25 million”.¹⁹² However, Mr Walker does not support the creation of an FST to fill that gap, instead recommending that:

The banks, on a voluntary basis, agree to establish and fund a voluntary ombudsman scheme that is available to businesses that are not ‘eligible complainants’ to the FOS by regulatory mandate. The voluntary scheme should be made available for businesses with turnover between £6.5m and £10m and in certain cases outside of the compulsory jurisdiction. This should largely fill the perceived gap.¹⁹³

Mr Walker elaborated further on this recommendation in oral evidence to the Committee, noting his preference for it to fall under the remit of the FOS rather than to exist on a standalone basis:

The simplest thing to me would be for the business end of what I am proposing to have its jurisdiction raised to £10 million in turnover, and to possibly, in time, move up to the EU definition of SMEs, which is considerably higher. [...] My preference [...] would be for the new business wing of the FOS to take it on.¹⁹⁴

Christopher Hodges, Professor of Justice Systems at the University of Oxford who contributed to Mr Walker’s review, explained the proposal further:

The FOS currently operates under two bases: one is the statutory scheme and the other is a voluntary jurisdiction to which the banks already subscribe. [...] Mr Walker is simply saying you expand the rules of the voluntary process, because it takes too long to get legislation, and the banks should voluntarily subscribe to that.¹⁹⁵

190 [Letter from Chief Executive of the FCA to Kevin Hollinrake MP](#) (17 September 2018)

191 Richard Samuel, “The FCA has now listened: Banks, it is in your interests to listen too”, *Capital Markets Law Journal*, Volume 13, Issue 1, 16 January 2018

192 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 52

193 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 53

194 Q391

195 Q394

128. Mr Walker’s primary reason for recommending this over the creation of an FST is the basis of decision making.¹⁹⁶ The Ombudsman would resolve disputes according to what it considers “fair and reasonable in all the circumstances of the case”, whereas an FST would only apply the law. Mr Walker argues that “generally [...] the fairness standard assists individual consumers rather than the converse, and it is likely the same will be true for SMEs”,¹⁹⁷ and that applying a fairness standard would allow the Ombudsman to rule against behaviour that is unfair yet legal.

129. As noted earlier in this report, Kevin Hollinrake MP argues that SMEs should be given enhanced legal rights by extending the right of action under s138D FSMA, which currently only applies to “private persons”.¹⁹⁸ This would give SMEs a right of action for breaches of the FCA’s Conduct of Business Sourcebook (COBS) rules. He goes on to set out the basis on which an FST would then take decisions if these enhanced legal rights were implemented:

A Financial Services Tribunal modelled on the existing procedures of tribunals would have guaranteed judicial independence under the 2007 Act [the Tribunals, Courts and Enforcement Act (2007)]. It would take legally binding decisions, subject to appeal, in public based on common law and the enhanced legal rights for businesses under section 138D [...] Any decisions taken by the Financial Services Tribunal would be on a strict legal basis and not the subjective fair and reasonable basis used by the FOS.¹⁹⁹

On the merit of amending s138D, Christopher Hodges expressed the view that doing so would “open the door to more legal arguments [...] and make things more complicated”.²⁰⁰

130. Aside from the basis of decision making, Simon Walker also argues that an ombudsman is preferable to an FST because it would be able to “aggregate and feedback data to regulators and government departments” and deal with complaints more quickly.²⁰¹ Whilst concluding against the creation of an FST, Mr Walker’s report does note that further change may be needed if his recommendations do not succeed, saying:

If ombudsman methods fail I would not rule out the creation of a new halfway house in terms of judicial processes simply to provide cheaper, quicker and easier alternatives to going to court.²⁰²

Mr Walker explained this point further in oral evidence, saying:

At the end of the day, if an ombudsman system fails, all options need to be looked at, including a tribunal. But I think that is quite a long way down the track.²⁰³

196 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 43

197 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 43

198 Kevin Hollinrake MP, [Fair Business Banking For All](#) (10 July 2018)

199 Kevin Hollinrake MP, [Fair Business Banking For All](#) (10 July 2018), p 51

200 Q427

201 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 45–46

202 Simon Walker CBE, Professor Christopher Hodges and Professor Robert Blackburn, [Review into the complaints and alternative dispute resolution \(ADR\) landscape for the UK’s SME market](#) (23 October 2018), p 43

203 Q400

Conclusions and recommendations

131. Providing more small businesses with access to the Financial Ombudsman Service is a sensible step. However the Committee was concerned by the timeline for the change originally proposed by the FCA, and was unconvinced that the necessary due diligence regarding the Ombudsman's readiness and capability had been undertaken.

132. The FCA has extended the timeline, with widened SME access to the FOS now expected to take effect from April 2019. Nevertheless, this leaves less than six months for the FOS to build the specialist unit that will be responsible for handling SME complaints, and to establish, from scratch, a wide range of proposed auxiliary tools and resources that will support that unit. By his own admission, Simon Walker's proposals to build this new capability within the FOS by the second half of 2019 are "extremely ambitious". This, coupled with concerns raised by many stakeholders regarding the Ombudsman's effectiveness in dealing with its current remit, threatens to undermine the proposal. Providing wider access to an Ombudsman that is under-prepared and under-resourced will yield little benefit.

133. Larger SME disputes are likely to be more complex and of higher value, and thus more challenging to resolve. Building the necessary capability at the FOS will be a significant task necessitating extensive training and recruitment, as well as the development of procedures more suited to this kind of case. Lessons must be learned from the serious problems caused by previous large-scale organisational change at the FOS, and both the FCA and the FOS must take ownership of this initiative. The Committee will continue to hold both to account throughout the implementation process.

134. The FCA should set out, as a matter of urgency, how it has satisfied itself that the FOS will be appropriately resourced to handle larger SME disputes from April 2019 as proposed. It should not hesitate to extend the timescale for implementation if it has any concerns surrounding the FOS's preparedness. If the timeline for implementation is pushed back, the FCA should ensure that complaints made on or after the original implementation date of 1 April 2019 are eligible for consideration when the changes do take effect. The FCA should also take this opportunity to reconsider the FOS's funding structure in light of the concerns raised by Richard Lloyd.

135. Expanding the remit of the FOS, as proposed by both the FCA and Simon Walker, will still leave a gap in the market for dispute resolution. Larger, more complex SME disputes will be either ineligible or unsuitable for the Ombudsman, yet those bringing these disputes may lack the resources required for litigation. The Committee believes that a Financial Services Tribunal is required to handle these disputes, and that such a body would usefully complement the expansion to the FOS's remit proposed by the FCA.

136. Simon Walker's review concluded against the creation of such a Tribunal. Instead, Mr Walker favours increasing the voluntary jurisdiction of the FOS such that businesses with turnover up to £10 million would be eligible. Mr Walker also proposed, in time, increasing this threshold to something considerably higher. The Committee does not believe that the Ombudsman is the appropriate forum for the resolution of disputes of this nature. The Committee has well documented reservations about the FOS's

current effectiveness and capabilities, and is of the view that broadening its remit well beyond what the FCA is already proposing would be unwise and potentially damaging. Separately, the Ombudsman's powers and procedures are unlikely to be appropriate for the resolution of large and complex cases. The Ombudsman lacks the power to take evidence under oath, compel the attendance of witnesses, or test evidence by cross-examination.

137. One of Mr Walker's arguments against the establishment of a Financial Services Tribunal is that its creation would require primary legislation, and that getting legislation through Parliament during and immediately after the UK's withdrawal from the European Union will be difficult. The Committee does not accept this. Parliament must always make time for initiatives of such discernible importance. There is strong cross-party support for the creation of a Financial Services Tribunal and the Government must not be hesitant when it comes to bringing forward the appropriate legislation, even at a time when there may be other significant demands on parliamentary time.

138. The Committee therefore recommends that the Treasury brings forward proposals for the creation of a Financial Services Tribunal. This must be accompanied by an amendment to s138D of the Financial Services and Markets Act 2000 to enhance the legal rights of SMEs. The Treasury should also consider drawing upon the expertise of the Law Commission to aid its consideration of this issue. Taken together, these changes will ensure that the UK's small businesses will no longer be denied justice, as so many have been in the past. We must introduce a system for dispute resolution and redress that gives the UK's SMEs the confidence to engage with financial services providers, safe in the knowledge that they are not vulnerable to exploitation and mistreatment.

139. In response to previous instances of mistreatment of SMEs, the FCA has worked with banks to establish 'ad hoc' voluntary complaints and redress schemes. It is very hard for the Committee and the wider public to have confidence in such schemes, when their design and operation is ultimately at the discretion of the banks responsible for mistreating their customers. The Committee agrees with Andrew Bailey, Chief Executive of the FCA, that the deficiencies of voluntary redress schemes serve to highlight the need for standing complaints and compensation arrangements for SMEs.

140. The Committee recognises that the formal powers of the FCA to secure compensation for SMEs are limited, even when regulatory requirements have been breached. However, it considers that the FCA could in some cases have taken a more robust approach to the design and operation of redress schemes. In particular, it is disappointing that Mr Bailey defended RBS's decision not to submit consequential loss claims in the GRG complaints process to independent oversight. RBS took great comfort from the Mr Bailey's endorsement of its stance; and it was only following sustained pressure from the Committee and from the Economic Secretary that it finally reversed its position. It would have been preferable had Mr Bailey used the opportunity created by the Committee's interest in GRG to get a better deal for SMEs.

141. More generally, it is concerning that, under existing law, the FCA cannot respond to a breach of its regulatory requirements by establishing an industry-wide redress scheme for SMEs. This inability to act in response to demonstrable misconduct has damaged trust and confidence in the regulator. At the next opportunity, the Financial

Services and Markets Act 2000 should be amended to allow the FCA to establish industry-wide redress schemes for incorporated businesses that have been affected by a breach of regulatory requirements.

142. The Committee has little confidence that Clydesdale's review of Tailored Business Loans provided appropriate compensation to all those who were mis-sold these products. It is surprised that the FCA appears to have had such little involvement in the design and operation of this scheme, given that the concerns around poor sales practices were acknowledged to be analogous to those that existed in respect of 'standalone' IRHPs.

Conclusions and recommendations

The SME finance market

1. It is naive to expect all business owners to possess a detailed understanding of the various financing options available to them. For many, the demands of running a business will leave little time for building financial expertise and searching the market. This points to a need for concise and easily accessible information targeted at the non-expert seeker of finance. As the centre of expertise on smaller business finance in the UK, the British Business Bank has an important role to play, and its Business Finance Guide and Finance Your Growth initiatives are to be welcomed. These tools must be maintained and promoted effectively to ensure they reach as wide an audience as possible. (Paragraph 10)
2. The Small Business Commissioner is also well placed to assist SMEs in building awareness and understanding of the financing options available to them. The Government should expand the remit of the Commissioner to provide it with a formal role in helping small businesses to access the finance they need, particularly by improving levels of awareness and understanding of financing options. (Paragraph 11)
3. Data on SME attitudes to external finance are concerning. The reluctance amongst many business owners to seek external finance is driven by a variety of factors, though it is clear that a lack of trust in lenders and an often misplaced fear of rejection are key contributors. The Economic Secretary recognised the challenges that stem from an entrenched unwillingness to apply for finance. The Treasury should conduct or commission work to identify why this attitude is commonplace amongst SMEs, and develop a strategy to ensure the UK's small businesses have the confidence to seek the external finance that is right for them. Efforts should also be made to ensure SMEs are aware of the options available to them if they are turned down for finance; specifically the Lending Appeals Process and the Bank Referral Scheme. (Paragraph 16)
4. The Committee welcomes the Treasury's recognition of the challenges faced by high-growth, scale-up businesses seeking investment. The Treasury should assess what can be done to improve the extent to which these companies benefit from the capital of the UK's long-term investors. (Paragraph 19)
5. Banks are often the first port of call for business owners seeking finance, and the importance of bank lending for SMEs is clear. While the fact that bank lending remains below pre-crisis levels may be cause for concern, the Committee accepts that a bank's risk appetite, and thus its willingness to lend to SMEs, is a legitimate commercial decision and a competitive differentiator. However, banks should keep their levels of SME lending under review to ensure they are regularly deciding whether it is optimal, rather than merely perpetuating historic trends. (Paragraph 23)
6. A lack of competition in SME banking, which has long-plagued the UK market, remains a key area of concern. While the emergence of new entrants is welcome, by the Government's own admission, more work is needed to bring meaningful

competition that will improve outcomes for SMEs. The Minister is correct to recognise the significant task faced by challenger banks seeking to break the stranglehold of the large incumbents. (Paragraph 29)

7. The previous Treasury Committee was unconvinced by the outcome of the CMA's retail banking market investigation. Two years have passed since the publication of the CMA's final report, yet the concerns around the level of competition persist. Given that the CMA itself noted that its measures were expected to take three to four years to have a noticeable impact, the Committee will monitor developments closely over the next two years. The Committee recommends that, in response to this report, the CMA provides an update on the implementation and impact of the measures introduced to improve competition in SME banking. (Paragraph 30)
8. Despite welcome changes to the PRA's regime in 2017, capital requirements remain a specific source of dissatisfaction for the UK's smaller banks. The Committee is clear that the UK's exit from the EU should not herald a new era of laxity in capital regulation, but considers that there is an opportunity to consider how the regime can better support competition without compromising safety and soundness. The Government should provide its assessment of how this could be achieved. (Paragraph 31)
9. The Economic Secretary told the Committee that there is more that needs to be done to improve the Alternative Remedies Package. This is unfortunate, as the opportunity for the Treasury to adjust the package has long since passed. The Committee views the initiative as a rare and critically important opportunity to provide a meaningful boost to competition in the SME banking market. Both the Treasury and the independent body administering the package must take a similar view, and should not see this initiative simply as a compliance exercise to satisfy the European Commission's State aid requirements. (Paragraph 37)
10. It is disappointing to hear that the industry is expressing concerns about the package's design and implementation. Delays to implementation are not without cost, and given those witnessed to date, it is all the more important for Banking Competition Remedies Ltd to administer the Alternative Remedies Package in as timely a manner as possible. (Paragraph 38)
11. The UK's alternative finance sector has demonstrated impressive growth in recent years. This is beneficial for SMEs seeking funding, and is in part down to measures introduced by the Government to encourage the sector's development. However, it still accounts for a relatively small portion of the overall SME finance market, and it is likely that potential for further growth still exists. The Government must not rest on its laurels; further work will be required to ensure the UK's alternative finance sector fully realises its potential while maintaining appropriate standards of protection for consumers. (Paragraph 49)
12. Open Banking has the potential to bring significant benefits for SMEs seeking finance. Its impact on the market to date, however, has been muted. As an initiative based fundamentally on the sharing of private financial information with third parties, its success will depend heavily on the willingness of consumers and SMEs to trust those firms. Perhaps understandably, given the frequency of high-profile IT

failures and data breaches, that trust appears to be seriously lacking. The Treasury told the Committee that it expected the impact of Open Banking to be slow to materialise, but the Committee urges it to take a more ambitious stance. Working with the Competition and Markets Authority, the Treasury should provide an assessment of the initiative's effect on the market to date. The authorities should also set clear and challenging milestones for the industry in relation to the timely development of Open Banking services, and deliver a comprehensive strategy for combatting the clear public trust issues that threaten to undermine the initiative. (Paragraph 50)

Misconduct and regulation in SME banking

13. The treatment of vast numbers of SME customers placed in RBS's Global Restructuring Group was nothing short of scandalous. The actions of GRG staff heaped untold misery on hard working business owners, recklessly destroying livelihoods in pursuit of profit. The "*Just Hit Budget!*" memo typified the toxic and unscrupulous culture entrenched within the organisation; a culture that has been rightly highlighted as a key driver of events at GRG. (Paragraph 56)
14. It is widely acknowledged that an organisation's culture is strongly guided by the "tone from the top"; the standards of ethics and integrity demonstrated by those in senior positions. The overwhelming majority of those responsible for cultivating GRG's patently unprincipled culture remain employed in RBS's new restructuring division. This threatens to seriously undermine RBS's claim that the bank's culture has changed fundamentally in recent years, and raises concerns that the bank has merely undertaken a rebranding exercise. (Paragraph 57)
15. The length of time taken by the FCA to investigate events at RBS's Global Restructuring Group has left those who saw their livelihoods destroyed understandably incensed. The Committee shares their concerns. (Paragraph 82)
16. The FCA is not taking enforcement action against the perpetrators of the misconduct at GRG, but this must not be interpreted as a "not guilty" verdict. SME customers were treated appallingly, and because of shortcomings in regulation this mistreatment is likely to go unpunished. The Committee views this inaction as a damning indictment of the regulatory regime and a sad reflection of its inadequacies. GRG exemplifies a regulatory framework that is failing the UK's small businesses. (Paragraph 83)
17. The FCA itself concedes that the failures at GRG might ordinarily have triggered disciplinary action had they occurred in a regulated business. That we have a regime in place that allows this sort of behaviour to take place with impunity is simply unacceptable. The victims of misconduct—who have seen those that destroyed their businesses go unpunished—rightly expect change. (Paragraph 84)
18. Experience has shown that the justification for leaving commercial lending outside the regulatory perimeter is feeble, and it is unclear whether this issue was subject to sufficient public debate when the regulatory perimeter was first established. Many small business owners are no more financially sophisticated than everyday consumers, yet they will often be required to engage with relatively complex

financial products. They may also lack the resources to purchase the appropriate advice or expertise externally. To deprive them of regulatory protection because of an assumed universal sophistication is wrong, and this unfairness is compounded by the fact that most SMEs are unaware of the regulatory position. In addition, the interconnection between personal finances and business finances can mean that the potential for personal catastrophe due to SME banking misconduct is significant. The Treasury and the FCA should introduce a regulatory regime that protects SMEs. The scope of the regime must be based on an appreciation of the varying levels of financial sophistication within the SME community. This will require analysis of the financial sophistication of the UK's SMEs that goes beyond blunt metrics covering headcount and turnover. (Paragraph 85)

19. The Committee recognises that bringing commercial lending within the regulatory perimeter will not be a 'silver bullet'. But doing so would afford the FCA a significant amount of discretion as to how to design and implement a regulatory regime. This regime would need to be proportionate—taking account of the potential impact on the supply of credit to SMEs—and targeted at those SMEs that show the greatest need for additional protection. (Paragraph 86)
20. The FCA's plans to drive up conduct standards in the SME lending market by using industry codes of conduct will not provide SMEs with the protection they need. The idea is untested and, as Andrew Bailey acknowledges, industry codes do not have a track record of success. Firms cannot be compelled to sign up to voluntary codes of conduct, and the FCA's initiative may lead to these codes being watered down if they are drafted in the knowledge that they may be enforced against in future. (Paragraph 87)
21. Mr Bailey told the Committee that if the initiative does not work, the regulatory perimeter will need to be reconsidered. The Committee considers it unwise to take a 'wait and see' approach; the authorities should get on the front foot by taking action that they know will provide adequate protection to SMEs. It is clear that extending the regulatory perimeter is now necessary. Waiting for another high-profile misconduct scandal before pursuing it would be irresponsible. This episode has raised wider questions about the perimeter of regulation, which the Committee continues to consider. (Paragraph 88)

Redress

22. Providing more small businesses with access to the Financial Ombudsman Service is a sensible step. However the Committee was concerned by the timeline for the change originally proposed by the FCA, and was unconvinced that the necessary due diligence regarding the Ombudsman's readiness and capability had been undertaken. (Paragraph 131)
23. The FCA has extended the timeline, with widened SME access to the FOS now expected to take effect from April 2019. Nevertheless, this leaves less than six months for the FOS to build the specialist unit that will be responsible for handling SME complaints, and to establish, from scratch, a wide range of proposed auxiliary tools and resources that will support that unit. By his own admission, Simon Walker's proposals to build this new capability within the FOS by the second half of 2019 are

“extremely ambitious”. This, coupled with concerns raised by many stakeholders regarding the Ombudsman’s effectiveness in dealing with its current remit, threatens to undermine the proposal. Providing wider access to an Ombudsman that is under-prepared and under-resourced will yield little benefit. (Paragraph 132)

24. Larger SME disputes are likely to be more complex and of higher value, and thus more challenging to resolve. Building the necessary capability at the FOS will be a significant task necessitating extensive training and recruitment, as well as the development of procedures more suited to this kind of case. Lessons must be learned from the serious problems caused by previous large-scale organisational change at the FOS, and both the FCA and the FOS must take ownership of this initiative. The Committee will continue to hold both to account throughout the implementation process. (Paragraph 133)
25. The FCA should set out, as a matter of urgency, how it has satisfied itself that the FOS will be appropriately resourced to handle larger SME disputes from April 2019 as proposed. It should not hesitate to extend the timescale for implementation if it has any concerns surrounding the FOS’s preparedness. If the timeline for implementation is pushed back, the FCA should ensure that complaints made on or after the original implementation date of 1 April 2019 are eligible for consideration when the changes do take effect. The FCA should also take this opportunity to reconsider the FOS’s funding structure in light of the concerns raised by Richard Lloyd. (Paragraph 134)
26. Expanding the remit of the FOS, as proposed by both the FCA and Simon Walker, will still leave a gap in the market for dispute resolution. Larger, more complex SME disputes will be either ineligible or unsuitable for the Ombudsman, yet those bringing these disputes may lack the resources required for litigation. The Committee believes that a Financial Services Tribunal is required to handle these disputes, and that such a body would usefully complement the expansion to the FOS’s remit proposed by the FCA. (Paragraph 135)
27. Simon Walker’s review concluded against the creation of such a Tribunal. Instead, Mr Walker favours increasing the voluntary jurisdiction of the FOS such that businesses with turnover up to £10 million would be eligible. Mr Walker also proposed, in time, increasing this threshold to something considerably higher. The Committee does not believe that the Ombudsman is the appropriate forum for the resolution of disputes of this nature. The Committee has well documented reservations about the FOS’s current effectiveness and capabilities, and is of the view that broadening its remit well beyond what the FCA is already proposing would be unwise and potentially damaging. Separately, the Ombudsman’s powers and procedures are unlikely to be appropriate for the resolution of large and complex cases. The Ombudsman lacks the power to take evidence under oath, compel the attendance of witnesses, or test evidence by cross-examination. (Paragraph 136)
28. One of Mr Walker’s arguments against the establishment of a Financial Services Tribunal is that its creation would require primary legislation, and that getting legislation through Parliament during and immediately after the UK’s withdrawal from the European Union will be difficult. The Committee does not accept this. Parliament must always make time for initiatives of such discernible importance.

There is strong cross-party support for the creation of a Financial Services Tribunal and the Government must not be hesitant when it comes to bringing forward the appropriate legislation, even at a time when there may be other significant demands on parliamentary time. (Paragraph 137)

29. The Committee therefore recommends that the Treasury brings forward proposals for the creation of a Financial Services Tribunal. This must be accompanied by an amendment to s138D of the Financial Services and Markets Act 2000 to enhance the legal rights of SMEs. The Treasury should also consider drawing upon the expertise of the Law Commission to aid its consideration of this issue. Taken together, these changes will ensure that the UK's small businesses will no longer be denied justice, as so many have been in the past. We must introduce a system for dispute resolution and redress that gives the UK's SMEs the confidence to engage with financial services providers, safe in the knowledge that they are not vulnerable to exploitation and mistreatment. (Paragraph 138)
30. In response to previous instances of mistreatment of SMEs, the FCA has worked with banks to establish 'ad hoc' voluntary complaints and redress schemes. It is very hard for the Committee and the wider public to have confidence in such schemes, when their design and operation is ultimately at the discretion of the banks responsible for mistreating their customers. The Committee agrees with Andrew Bailey, Chief Executive of the FCA, that the deficiencies of voluntary redress schemes serve to highlight the need for standing complaints and compensation arrangements for SMEs. (Paragraph 139)
31. The Committee recognises that the formal powers of the FCA to secure compensation for SMEs are limited, even when regulatory requirements have been breached. However, it considers that the FCA could in some cases have taken a more robust approach to the design and operation of redress schemes. In particular, it is disappointing that Mr Bailey defended RBS's decision not to submit consequential loss claims in the GRG complaints process to independent oversight. RBS took great comfort from the Mr Bailey's endorsement of its stance; and it was only following sustained pressure from the Committee and from the Economic Secretary that it finally reversed its position. It would have been preferable had Mr Bailey used the opportunity created by the Committee's interest in GRG to get a better deal for SMEs. (Paragraph 140)
32. More generally, it is concerning that, under existing law, the FCA cannot respond to a breach of its regulatory requirements by establishing an industry-wide redress scheme for SMEs. This inability to act in response to demonstrable misconduct has damaged trust and confidence in the regulator. At the next opportunity, the Financial Services and Markets Act 2000 should be amended to allow the FCA to establish industry-wide redress schemes for incorporated businesses that have been affected by a breach of regulatory requirements. (Paragraph 141)
33. The Committee has little confidence that Clydesdale's review of Tailored Business Loans provided appropriate compensation to all those who were mis-sold these products. It is surprised that the FCA appears to have had such little involvement

in the design and operation of this scheme, given that the concerns around poor sales practices were acknowledged to be analogous to those that existed in respect of 'standalone' IRHPs. (Paragraph 142)

Formal minutes

Wednesday 24 October 2018

Members present:

Nicky Morgan, in the Chair

Rushanara Ali	Stephen Hammond
Mr Simon Clarke	Catherine McKinnell
Charlie Elphicke	Wes Streeting

Draft Report (*SME Finance*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 142 read and agreed to.

Resolved, That the Report be the Twenty-Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 30 October at 9.45 a.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 6 March 2018

Question number

James Meekings, Co-Founder and UK Managing Director, Funding Circle; **Stephen Welton**, CEO, Business Growth Fund; **Katrin Herrling**, Co-Founder and CEO, Funding Xchange; **Luke Lang**, Co-Founder, Crowdcube

[Q1–67](#)

Wednesday 9 May 2018

Nikki Turner, Director, SME Alliance; **Keith Elliott**, Former CEO, Premier Motor Auctions; **Craig Keech**, Director, Legacy Consulting; **Guy Stenhouse**, Managing Director, Shancastle Investments

[Q68–93](#)

Lawrence Tomlinson, Chairman, LNT Group

[Q94–125](#)

Keith Morgan, CEO, British Business Bank; **Suren Thiru**, Head of Economics and Business Finance, British Chambers of Commerce

[Q126–158](#)

Wednesday 16 May 2018

Andrew Green QC, Blackstone Chambers, **Cat MacLean**, MBM Commercial, and **Richard Samuel**, 3 Hare Court Chambers

[Q159–206](#)

Wednesday 23 May 2018

Rishi Khosla, CEO, OakNorth, **Amanda Murphy**, Head of Commercial Banking, HSBC, and **Ian Smith**, Chief Financial Officer, CYBG

[Q207–244](#)

Wednesday 27 June 2018

John Glen MP, Economic Secretary to the Treasury; **Philip Duffy**, Director, Enterprise and Growth, HM Treasury; **David Raw**, Deputy Director, Banking and Credit, HM Treasury

[Q245–357](#)

Tuesday 23 October 2018

Simon Walker, CBE, Independent Chair of the UK SME Complaints and Resolution Review, and **Professor Christopher Hodges**, Professor of Justice Systems, University of Oxford

[Q358–432](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

SME numbers are generated by the evidence processing system and so may not be complete.

- 1 AAT ([SME0038](#))
- 2 Aldermore ([SME0018](#))
- 3 Alternative Business Funding ([SME0011](#))
- 4 Association of Investment Companies ([SME0001](#))
- 5 BLG Data Research Centre ([SME0024](#))
- 6 British Chambers of Commerce ([SME0017](#))
- 7 Crowdcube ([SME0028](#))
- 8 Director Chris Cook ([SME0031](#))
- 9 EIS Association ([SME0007](#))
- 10 Finance & Leasing Association ([SME0012](#))
- 11 Financial Conduct Authority ([SME0033](#))
- 12 Financial Services Consumer Panel ([SME0014](#))
- 13 finnCap Ltd ([SME0008](#))
- 14 Funding Circle ([SME0034](#))
- 15 ICAEW ([SME0037](#))
- 16 ICAS ([SME0004](#))
- 17 iwoca ([SME0032](#))
- 18 Jerry Coakley, Claudia Girardone, and Mingchen Sun, Essex Business School ([SME0029](#))
- 19 Jim Shannon MP, Brian Little and Paul Moore ([SME0025](#))
- 20 Lending Standards Board ([SME0027](#))
- 21 LendInvest Limited ([SME0013](#))
- 22 LexLaw ([SME0039](#))
- 23 Mr Kristian Jurgensen ([SME0009](#))
- 24 Mr Mark Brune ([SME0023](#))
- 25 Mr Richard Samuel ([SME0003](#))
- 26 Newable ([SME0021](#))
- 27 OakNorth ([SME0030](#))
- 28 Octopus ([SME0010](#))
- 29 Oxygen Finance ([SME0020](#))
- 30 QA Advisory ([SME0005](#))
- 31 Raffaella Calabrese (Uni. of Edinburgh), Marta Degl'Innocenti (Uni. of Southampton), Si Zhou (Uni. of Southampton)- written evidence ([SME0015](#))
- 32 RBS ([SME0035](#))

- 33 Rishi Khosla ([SME0041](#))
- 34 SME Alliance ([SME0026](#))
- 35 Tees Valley Combined Authority ([SME0016](#))
- 36 The Genesis Initiative ([SME0036](#))
- 37 UK Finance ([SME0019](#))
- 38 VCTA ([SME0022](#))
- 39 Warwick Risk Management ([SME0040](#))
- 40 Windsor Actuarial Consultants ([SME0006](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Appointment of Sir Dave Ramsden as Deputy Governor for Markets and Banking at the Bank of England	HC 472
Second Report	Appointment of Professor Silvana Tenreyro to the Bank of England Monetary Policy Committee	HC 471
Third Report	The Solvency II Directive and its impact on the UK Insurance Industry	HC 324 (HC 863)
Fourth Report	Transitional arrangements for exiting the European Union	HC 473 (HC 850)
Fifth Report	Autumn Budget 2017	HC 600 (HC 757)
Sixth Report	Appointment of Elisabeth Stheeman to the Financial Policy Committee	HC 758
Seventh Report	Student Loans	HC 478 (HC 995)
Eighth Report	Appointment of Charles Randell as Chair of the Financial Conduct Authority and the Payment Systems Regulator	HC 838
Ninth Report	Childcare	HC 757 (HC 1196)
Tenth Report	Re-appointment of Alex Brazier to the Financial Policy Committee	HC 936
Eleventh Report	Re-appointment of Donald Kohn to the Financial Policy Committee	HC 937
Twelfth Report	Re-appointment of Martin Taylor to the Financial Policy Committee	HC 938
Thirteenth Report	The Motability Scheme	HC 847
Fourteenth Report	Re-appointment for Gertjan Vlieghe to the Monetary Policy Committee	HC 1056
Fifteenth Report	Women in finance	HC 477 (HC 1567)
Sixteenth Report	Appointment of Bradley Fried as Chair of Court, Bank of England	HC 1319
Seventeenth Report	Appointment of Professor Jonathan Haskel to the Monetary Policy Committee	HC 1318
Eighteenth Report	Appointment of Andy King to the Budget Responsibility Committee of the OBR	HC 1340

Nineteenth Report	Household finances: income, saving and debt	HC 565 (HC 1627)
Twentieth Report	Appointment of Jill May to the Prudential Regulation Committee	HC 1511
Twenty-first Report	Appointment of Professor Julia Black to the Prudential Regulation Committee	HC 1512
Twenty-second Report	Crypto-assets	HC 910
Twenty-third Report	Re-appointment of Sir Jon Cunliffe as Deputy Governor for Financial Stability at the Bank of England	HC 1626
First Special Report	Transitional arrangements for exiting the European Union: Government Response to the Treasury Committee's Fourth Report	HC 850
Second Special Report	The Solvency II Directive and its impact on the UK Insurance Industry: Bank of England Response to the Committee's Third Report of session 2017–19	HC 863
Third Special Report	Autumn Budget 2017: Government and Office for Budget Responsibility responses to the Treasury Committee's Fifth Report	HC 757
Fourth Special Report	Student Loans: Government and Office for National Statistics responses to the Committee's Seventh Report	HC 995
Fifth Special Report	Childcare: Government Response to the Committee's Ninth Report	HC 1196
Sixth Special Report	Women in finance: Government Response to the Committee's Fifteenth Report	HC 1567
Seventh Special Report	Household finances: income, saving and debt: Government Response to the Committee's Nineteenth Report	HC 1627