

UK lawmaker asks FCA to sanction banks destroying records ahead of historic arbitration scheme

Mar 28 2019 Lindsey Rogerson, Regulatory Intelligence

The co-chair of the All Party Parliamentary Group for Fair Business Banking [APPGFB] has asked the Financial Conduct Authority (FCA) to warn banks not to destroy records that may be used for arbitration over historical dispute cases.



Kevin Hollinrake, who last week took up a seat on the steering group which will oversee the establishment of the arbitration scheme, asked FCA chief executive Andrew Bailey in a letter to also articulate what action he will take against banks that have already disposed of records.

The arbitration scheme to look at historic cases of disputes between small and medium-sized businesses and their banks, which has the backing of HM Treasury, is scheduled to start hearing the first of an estimated 60,000 cases in September.

"The APPG[FB] has been presented with evidence from [business owners] and their representatives who allege that financial institutions have destroyed vital documentation and routine correspondence relating to their claim against the bank," Hollinrake told Bailey in a letter this month.

FCA SYSC 9 states that firms should retain records for as long as is necessary.

The APPGFB is concerned that banks are destroying paperwork and emails with their business customers which could be needed to support those businesses when their cases come to be heard by the arbitration scheme. It has compiled a number of case studies which highlight elements of what it considers mis-treatment by banks.

Moorcroft Estates, a Northern Ireland-based property business, is one such case where correspondence has been destroyed. Hubert and Marjorie Armstrong, directors of Moorcroft Estates, were told by Danske Bank that all electronic communication between them and their business banking manager had been destroyed "in accordance with bank policy" when their manager retired.

Conduct risk

Danske also said it could not locate a valuation report which is central to the Armstrongs' dispute with the bank in May 2017. The Armstrongs subsequently tracked down a copy of the document which clearly states surveying firm McClelland Salter prepared the report "on the instructions of Northern Bank Ltd".

Northern Bank was taken over by Danske in 2005 and adopted the Danske brand in 2012.

Danske declined to explain why it was bank policy to destroy correspondence when a business manager retired.

Jim Shannon, the Armstrongs' MP and a member of the APPGFB, raised the specifics of their case with Bailey directly in May and July 2018. In addition to the destruction of documentation, Shannon also discussed with Bailey Danske's handling of the Armstrongs' case once it was notified in June 2010 that Hubert was suffering from severe depression.

Bailey acknowledged in correspondence to Shannon that it was apparent from his having reviewed the Armstrongs' subsequent interactions with the FCA that Hubert was an individual showing "clear signs of vulnerability."

The FCA outlines best practice for the treatment of vulnerable business customers in its statement on RBS's global restructuring group last July.

Philip Hammond, the UK chancellor, in January iterated to Stephen Jones, chief executive UK Finance, that he expected banks to be able to demonstrate they had "learned the lessons of the past" about how they treat business customers in a letter about the parameters of the arbitration scheme.

Reputational risk

José Viñals, group chairman of Standard Chartered, told central bankers in Basel this month that banks' efforts to regain public trust after the financial crisis were being hampered by past misdeeds still playing out in the media.

Former business customers taking to the streets in yellow vests, as the Armstrongs have done, pose a reputational risk to the banks and damage efforts by the sector to regain trust.

A 2019 Edelman Trust Barometer showed that trust levels for banks had fallen back to the low levels witnessed after the 2008 financial crisis.

"I feel we had nothing left to lose with this protest as I have written extensively to the revolving door of Danske CEOs in Copenhagen only for my correspondence to be passed back to Belfast. We see this as way to be heard," Armstrong told Thomson Reuters Regulatory Intelligence.

The Armstrongs leafleted a rugby match sponsored by Danske on St Patrick's Day, and regularly hand out leaflets to people outside Danske branches around Northern Ireland. In Scotland, Clydesdale Bank faces similarly damaging action from the actions of one of its former customers, John Guidi, who is currently on hunger strike outside its main office in Glasgow.

Both actions have received widespread media coverage in UK newspapers.

Hammond also acknowledged in his letter to Jones the damaging effect disputes between SMEs and their lenders being allowed to rumble on was having.

"It is important that this scheme draws a line under the events of the past, allowing both businesses and banks to move forward," Hammond said in the letter, which set out his expectations for the forthcoming arbitration scheme.

Hammond also warned Jones there would be consequences if the arbitration scheme was not conducted fairly.

Specifically, Hammond wants the arbitration scheme to consider complaints previously rejected by the seven banks signed

up to it, which includes Danske. He also said that he expected no cap to be placed on the sums that the arbitration scheme could award.

"We have had dialogue with this customer for some time. We strongly disagree with allegations made against us. The matter is currently with our legal advisors," a Danske Bank spokesman told TRRI.

This article was updated at 08:49 on March 28, 2019 to reflect that Northern Bank adopted the Danske brand in 2012.

This article was updated at 09:53 on March 28, 2019 to correct Kevin Hollinrakes roles in paragraph one and two.

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