

Another Coat of Whitewash

1 Quality Court
Chancery Lane
London
WC2A 1HR

The FCA has just published its report into its own ‘further investigative steps in relation to RBS GRG’: <https://www.fca.org.uk/news/press-releases/fca-publishes-final-report-relation-rbs-grg>. The report seeks to justify why the FCA was unable to take action against RBS or any individuals involved in GRG for their ‘systematic and widespread inadequate’ treatment of SME customers (p.3). It is, unfortunately, another example of a failure by the regulator to get to the bottom of the issues.

The most important problem caused by GRG’s actions was that viable businesses were closed down in order to boost RBS’s balance sheet in the short term. As the independent review had found, ‘GRG put too much focus on increasing prices and reducing debt, without properly considering the longer-term survival of customers’ (p.51). This was the consequence of the commercial objective which GRG prioritised over the objective of turning customers around (pp.23-25). The report pretends that there was no ‘evidence of deliberate intent to cause harm by management’ (p.4), but the destruction of businesses was often the inevitable consequence of GRG taking ‘action that was inconsistent with genuine efforts to turn a distressed SME customer around’ (p.23).

The report also shows the regulator’s continued willingness to accept RBS’s explanations, even when they are patently implausible. The suggestion that GRG found it ‘difficult to recruit staff in the financial crisis’ (p.41) is barely credible, given the number of bankers laid off by the financial services industry during that period. Equally unsatisfactory is the FCA’s apparent acceptance of RBS’s evidence that SMEs ‘made up such a small proportion of GRG’s total assets ... that spending time driving SME customers out of business “just did not stack up”.’ (p.70). The accusation levelled at RBS is precisely that it prioritised short term recovery of cash over long term sense.

The report recognises, at last, the inequality of bargaining power between SMEs and big banks (p.6) and that the owners of SMEs would have expected that their businesses would receive similar protections to retail customers (p.21). It fails, however, to draw the obvious conclusion that SMEs should be able to sue for breach of the regulatory rules which are supposed to apply to all customers classified as retail clients. Moreover, the regulator refuses to express a view about the reasonableness of the contractual clauses which RBS used to force customers into GRG or as justification for closing businesses down (p.51).

020 3735 8070

www.forumchambers.com

clerks@forumchambers.com

The FCA concludes by congratulating itself on having extended the jurisdiction of the Financial Ombudsman Service so that it can be accessed by more SMEs and can award up to £350,000 (p.72). It totally fails to acknowledge that £350,000 is far less than the loss caused in most cases when a business is destroyed.

SMEs and their advisors reading the report will hardly be assured that the regulator understands the issues that they continue to face, still less than the regulator is really committed to resolving them. The report looks like just another coat of whitewash, with the FCA failing to acknowledge the true extent of the damage RBS caused to SMEs and to the British economy.

David McIlroy

Forum Chambers

dmcilroy@forumchambers.com

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