CHALLENGING

THE BAILEY APPOINTMENT

February 2020

Summary

During his tenure as Chief Executive of the Financial Conduct Authority (FCA), a number of significant failings have occurred. These give rise to serious issues regarding the integrity of Mr Andrew Bailey and whether he is a "fit and proper person" to undertake the role of Governor of the Bank of England.

There is evidence that in conjunction with other authorities, Mr Bailey delayed investigations and failed to prosecute serious wrongdoing and criminal fraud undertaken by banks, especially Lloyds Banking Group and Royal Bank of Scotland[1]. Mr Bailey often sought to blame his failure on the businesses affected being somehow outside the "perimeter"[2] of the FCA and governed by contract law. This raises the issue as to whether or not Mr Bailey deliberately sought to turn a blind eye to serious criminality and abdicated the FCA's regulatory responsibilities by failing to take meaningful regulatory or enforcement action against the banks, thereby allowing them to remain above the law.

The FCA is supposed to be independent of Government and act autonomously.[3] The issues raised within this document call into doubt the ability of the Bank of England to maintain operational independence over monetary policy.[4]

Mr Bailey's appointment should follow the generally accepted principles of good practice relating to the making of public appointments[5] and any questions over his integrity should be seriously examined. Only a person of unimpeachable character and record can command the respect and authority, which this institution demands.

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[1] https://www.ft.com/content/0cfe7934-77e9-11e9-be7d-6d846537acab; https://www.cityam.com/fca-chief-says-evidence-not-there-to-take-action-on-rbs-grg-unit/

[2] https://www.thetimes.co.uk/article/financial-conduct-authority-to-be-denied-extra-powers-fjd5h50x9 11.10.2019

[3] Harriet Baldwin, Economic Secretary to HM Treasury replying to backbench debate on FCA: "*The FCA is of course operationally independent of the Government. We appoint the chief executive and the board, and the FCA's objectives and duties were voted into statute during the last Parliament. I firmly believe in the independence of the FCA*" 12.2.2016.

[4] http://news.bbc.co.uk/onthisday/hi/dates/stories/may/6/newsid_3806000/3806313.stm Granted May 1997, effective June 1998

[5] The Nolan report 2001 – seven principles. No. 2 Integrity: "*Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties*".
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336840/1stInquiry_Summary.pdf

Introduction

This briefing note focusses on the failure of Mr Bailey as Chief Executive of the Financial Conduct Authority (FCA) to investigate or prosecute serious wrongdoing and criminal fraud undertaken by certain banks, notably those formerly or currently owned by the UK taxpayer, Lloyds and RBS. It has been prepared particularly from the perspective of Lloyds Banking Group and its extensive frauds.

Mr Bailey was appointed by the former Chancellor, Rt. Hon George Osborne MP to his present position in 2016, famously without interview[6] and many of the decisions he has taken appeared to have followed the wishes of Government.

The briefing note does not include reference to scandals such as London Capital & Finance, which may have resulted from loose or inadequate regulation, nor does it describe the continued operational failings at the regulator, including the highly damaging effects of the revolving door[7], by which the FCA has lost senior, talented professionals to the private financial sector.

[6] https://www.thisismoney.co.uk/money/news/article-3546335/Andrew-Bailey-handed-job-FCA-without-interview-Questions-raised-political-influence-independent-body.html

[7] https://www.commonlawcourt.com/wp-content/uploads/2019/09/LargerthanWatergatePrintDec2018.pdf Tables pp. 28-29.

Summary of Mr Bailey's failures at the FCA

1. Failure to investigate the detailed allegations contained in the Turnbull report and the numerous offences it described. These allegations were criminal as defined by FSMA 2000, the Companies Act 2006, the Proceeds of Crime Act 2002 and the Money Laundering regulations 2003 & 2007.

2. Failure to prevent Lloyds Banking Group from establishing three unnecessary reviews regarding the Halifax Bank of Scotland (HBoS) Reading fraud, thereby depriving victims of the fraud to swift and adequate compensation.

3. Failure to penalise the Bank of Scotland in relation to the HBoS Reading fraud in a timely manner.

4. In January 2014, the FCA appointed Promontory to undertake a Section 166 investigation under FSMA 2000 into alleged wrongdoing by RBS' Global Restructuring unit (GRG). The FCA restricted Promontory's ability to ascertain the full facts and scale of the wrongdoing by defining the study's remit and methodology from the outset which may have compromised the results and made the outcome unrepresentative. The FCA refused eight times to publish the Section 166 report, with Mr Bailey refusing the request of the Treasury Select Committee in September 2017, a move which appeared to frustrate transparency and conceal wrongdoing.

5. Failure to investigate or recommend criminal prosecution of widespread serious wrongdoing by Lloyds Banking Group, including its recovery units.

6. Failure to investigate serious fraud at Lloyds and RBS during periods of time in which their shares were being sold by the Government. This may have contributed, whether inadvertently or not, to a form of securities fraud.

7. Failure to recommend criminal prosecutions regarding the manipulation of the London Inter-Bank Offered Rate (LIBOR).

8. Failures in relation to the implementation and oversight of the Interest Rate Hedging Product (IRHP) review and redress scheme.

9. Ongoing failure, together with the National Crime Agency (NCA) and Serious Fraud Office (SFO) to allow a prompt investigation into the alleged systemic forgery of signatures by Lloyds Banking Group.

Mr Bailey's failures at the FCA:

1. Failure to investigate the allegations contained in the Turnbull report and the numerous criminal offences it described.

The Turnbull report[8] outlined systemic wrongdoing involving Halifax Bank of Scotland (HBoS), which was later taken over by Lloyds Banking Group at the Government's request. The bank commissioned Sally Masterton, a Lloyds risk manager, to prepare the review and it was submitted in September 2013. The report described repeated moves by officers of HBoS to ensure that losses from a large-scale fraud, which had been mainly carried out at its Reading branch by managers and their associates, were kept below 5% of the bank's net income[9]. Otherwise, this would have required official disclosure, rendered HBoS a "gone concern" by February 2008 and preventing its takeover by Lloyds Banking Group in January 2009.

The charges made in the Turnbull report were extremely serious:

- "Lloyds Banking Group is in a very difficult position and cannot be risk being seen to condone criminality and injustice". "There are colleagues remaining in the business who are implicated".
- "The former directors of HBoS and certain senior executives have committed serious breaches and violations of statutory and regulatory objectives, including those of a criminal nature".
- "The Financial Services Authority (FSA) may have had an involvement with Lloyds, in concealing the misconduct and failings of KPMG (HBoS' auditors)".
- "The FSA are implicated in the 2008 HBoS rights issue", which was knowingly based on false information. "The FSA was knowingly and recklessly misled".
- "KPMG have breached statutory, regulatory and professional obligations, including those of a criminal nature".
- "Those charged with governance and KPMG have condoned criminality and are themselves criminally implicated". "PWC have breached statutory, regulatory and professional obligations, including ones relating to money laundering offences".

Since 2005 onwards, there has been a concealment of a major fraud, with Lloyds Bank later suppressing important sections of the Turnbull report. In 2014 Q1, the bank's lawyers sent a redacted version to the FCA[10], falsely claiming that the report was undertaken by Ms. Masterton of her own volition[11]. Lloyds' executive management then concealed it from their Chairman for three years and when Lord Blackwell

[8] http://www.appgbanking.org.uk/wp-content/uploads/2018/06/draft-Project-Lord-Turnbull-Report-part-1.pdf
[9] E-mails from Stewart Livingstone, HBoS chief risk officer to David Miller, managing director, credit sanctioning; Ian Goodchild, HBoS group risk credit to Peter Hickman, group risk; Steven Clark, group risk credit to Ian Goodchild, Ian Goodchild to Stewart Livingstone, 11.2.2008. Apply for transcripts.
[10] Turnbull report
[11] Turnbull report, also supported by Thames Valley Police & Crime Commissioner, Mr Anthony Stansfeld.

received a copy, he withheld it from his non-executive board for a further year.[12]

Mr Bailey has never investigated the very serious allegations contained in the Turnbull report.

2. Failure to prevent Lloyds Banking Group from establishing three unnecessary reviews regarding the HBoS Reading fraud.

The HBoS Reading fraud took place between 2003 and 2007. In October 2008, Lloyds Bank received evidence of significant irregularities, while the regulator was notified in July 2009. A decade after the fraud, Thames Valley Police finally managed to bring the case to court[13] and those involved were successfully prosecuted. However, even after the fraudsters had been jailed, the FCA permitted Lloyds Banking Group to appoint Professor Russell Griggs[14] to consider the compensation for victims of the fraud, a review which triggered widespread complaints. Then, a month after that and despite ongoing criticism, the FCA allowed the bank to appoint Dame Linda Dobbs to investigate when the bank first knew about the Reading fraud[15]. Her review is not expected to be completed until the second half of this year. Finally, in May 2019, the FCA sanctioned Lloyds Bank to appoint Sir Ross Cranston[16] to investigate whether or not the Griggs review had been satisfactory, and he concluded recently that it had been neither fair nor reasonable[17].

Since early 2017 when the fraudsters were jailed, Mr Bailey failed to instruct Lloyds Banking Group to act correctly and fully and adequately compensate victims of the major fraud. Justice delayed is justice denied. However, recently on 23rd January 2020, some 1,085 days after the fraudsters were jailed, Lloyds agreed to compensate the victims[18], and this may finally amount to full and appropriate compensation. Mr Bailey may have encouraged Lloyds to change its stance, as the long-standing mistreatment of the HBoS Reading victims under his watch, could have damaged his chances of being selected as Governor of the Bank of England.

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[12] Thames Valley Police & Crime Commissioner, Mr Anthony Stansfeld, including meeting with Lloyds Banking Group, 23.3.2017.

[13] Lloyds Banking Group, Westminster Hall presentation, September 2018, slide 32: "*Thames Valley Police instead have described how Lloyds claimed legal privilege over documents which were not entitled to be protected, supplied vast amounts of irrelevant information and briefed witnesses, prior to police interviews, on what they could say without breaching guidelines set by the bank and its lawyers*".

[14] https://www.lloydsbankinggroup.com/Media/Press-Releases/press-releases-2017/lloyds-banking-group/professor-russel-griggs-appointed-independent-reviewer-of-hbos-reading-customer-cases/

[15] https://www.theguardian.com/business/2017/apr/26/lloyds-judge-hbos-fraud-compensation

[16] http://www.appgbanking.org.uk/uncategorized/appointment-of-sir-ross-cranston-as-reviewer-of-griggs-review/

[17] https://daysparkes.com/cranstonreviewreports/

[18] https://news.sky.com/story/lloyds-to-write-off-hbos-reading-fraud-debts-11915722

3. Failure to penalise the Bank of Scotland in relation to the HBoS Reading fraud in a timely manner.

In June 2019, the FCA fined Bank of Scotland £45.5 m for failures of notification regarding the HBoS Reading fraud[19] which, as stated, took place between 2003 and 2007.

Mr Bailey's decision to finally sanction this penalty, some 12 years after the fraud, raises questions regarding his ability to follow due and proper process.

4. Refusal to publish the full version of the Section 166 report into RBS-GRG

Following the FCA's failure to pursue numerous complaints about RBS' Global Restructuring Group unit (GRG), the Business Secretary Rt. Hon Vince Cable MP independently commissioned the Tomlinson report[20]. This was published in November 2013 and highlighted the widespread mistreatment of SMEs. Then, in January 2014, the FCA appointed Promontory and as a sub-contractor Mazars[21], to conduct a Section 166 review under FSMA 2000. The British regulator was seemingly untroubled by Promontory's suspension by the New York banking regulator[22] in August 2013 for unduly favouring Standard Chartered in a report, for which they were paid US$54 m.

Subsequently, RBS appointed Denton Wilde Sapp, Cameron McKenna and PWC to conduct a second investigation into the conduct of GRG, after the first investigation the bank had initiated, by Clifford Chance[23], had been described as a whitewash. Following his appointment to the FCA, Mr Bailey ensured that in November 2016, the regulator provided only a summary of Promontory's findings and avoided publishing the full report, which it had received three months earlier.

In total, the FCA refused eight times to publish the complete Section 166 report into RBS-GRG, with Mr Bailey declining the Treasury Select Committee's request to publish in September 2017[24] and claiming that it was not in the public interest. Instead, the FCA once again produced only a summary, which altered the facts and conclusions, thereby reducing RBS' alleged failure. However, a leaked version of the full report[25] revealed widespread and long-standing wrongdoing at GRG. The publication also enabled a full audit and analysis to be undertaken, which confirmed that the report had been fettered by the FCA from its inception and the conclusions and outcomes altered.

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[19] https://www.fca.org.uk/news/press-releases/fca-fines-bank-scotland-failing-report-suspicions-fraud
[20] www.tomlinsonreport.com
[21] https://www.investmentweek.co.uk/investment-week/news/2323573/fca-appoints-promontory-mazars-review-rbs-failures
[22] Background to 2012 case involving HSBC provided by: https://www.nytimes.com/2015/08/04/business/dealbook/new-york-regulator-moves-to-suspend-promont ory-financial.html
[23] https://www.insider.co.uk/news/clifford-chance-rbs-grg-report-12614055
[24] https://www.moneymarketing.co.uk/news/fca-refuses-publish-report-rbs-mistreatment-claims/
[25] https://www.parliament.uk/documents/commons-committees/treasury/s166-rbs-grg.pdf

5. Failure to investigate or prosecute extensive criminal wrongdoing by Lloyds Banking Group and its recovery units.

Systemic professional misconduct and fraud involving Lloyds Bank and its professional agents dates back to at least the 1980's. The following list of charges[26] has been compiled from victims' cases and their documentary evidence:

- Targeting of asset-rich businesses and engineering customer defaults to assist in improving the bank's capital ratios

- Improper use of representatives of leading accounting firms to gain control of targeted companies

- Conspiracy to defraud through false representation, failing to disclose information and abuse of position, in conjunction with turnaround professionals

- The use of secret, internal accounts including management obligation accounts (MOA's)

- Manipulation of property valuations to achieve engineered loan-to-value covenant breaches

- Conspiracy with a major company to engineer the default of a major customer and misappropriate their property portfolio

- Manipulation of overdraft facilities and the levying of unfair and excessive bank fees & interest charges

- Lying whether Lloyds Business Support Unit (BSU) had become a profit centre

- Widespread wrongdoing and criminality involving the bank's BSU network and panel agents including solicitors, insolvency practitioners and receivers

- Use by Lloyds' panel solicitors of false bankruptcies as a principal means of weakening targeted customers

- Systemic criminal wrongdoing with respect to the Land Registry

- Panel receivers acting for the bank representing to customers and conducting themselves as managers of Lloyds Banking Group

[26] The charges against Lloyds Banking Group of systemic professional misconduct and fraud are evidenced by a large quantity of documentary and other supporting material held by victims. Given the duration and extent of the frauds, the Lloyds Bank Victims Group now comprises individuals, who have detailed knowledge and / or experience of specific types of fraud. These include insolvency & false bankruptcy, misuse of Land Registry, misrepresentation to public bodies, signature forgeries, reliance on deliberately invalid documentation, false representation, the use of fake accounts and management obligation accounts, legal wrongdoing, the misuse of accounting firms to gain control of targeted companies and close association with secondary lenders suspected of fraud. Contact us for more details.

- Forcing supposedly Independent Business Reviews (IBRs) by accountancy firms on customers to engineer the desired outcome for the bank

- Extensive legal wrongdoing including the redaction, withholding, falsification and destruction of evidence, reliance on false instruments in court, the forgery of signatures – *see Section 9* - perjury and other serious offences related to perverting the course of justice

- Misrepresentations to Trading Standards, the RSPCA, the National Health Service and other public bodies

- The use of unregulated LPA receivers, as criticised by the Chairman of the Business, Innovation & Skills Select Committee

- Reliance on deliberately invalid appointment documents for unregulated LPA receivers to distance the bank from the long-standing criminal conduct of those receivers

- Systemic and long-standing mistreatment of whistle-blowers and the indiscriminate use of Non-Disclosure Agreements (NDA's) to cover up criminality

- Benefitting from the deliberate failure by one regional Police Authority and the Solicitors Regulation Authority properly to investigate serious criminal wrongdoing involving a Lloyds' recovery unit and its professional agents

- Close association, including the sharing of professional agents, with a secondary lender, whose activities have been described as "a prima facie case of criminal fraud"

Mr Bailey appears to have been aware of this catalogue of wrongdoing but has taken no action and may have encouraged other authorities to similarly fail to investigate or prosecute.[27]

6. Contributed to possible securities fraud, whether inadvertently or not, by not investigating alleged criminal fraud by Lloyds and RBS, during a period in which the Government was selling its holdings in Lloyds and part of those in RBS.

Over an extended period, serious professional misconduct and criminal fraud undertaken by the taxpayer-owned banks, Lloyds and RBS, were hidden from the public at the same time as the sale of publicly-owned shares in those banks was being formulated or commenced.[28]

[27] Turnbull report: also demonstrated by City of London Police, SFO –Director David Green letter, dated 20.6.2016; Numerous police authorities including Avon & Somerset Police's refusal to investigate Lloyds Recoveries Bristol or UK Acorn Finance; Solicitors Regulation Authority including their long-standing refusal to release Bevan Brittan report. Obstruction over Operation Hornet witnessed by Thames Valley Police.

[28] Lloyds Banking Group Westminster Central Hall, September 2019, slide 36 "Investors have reason to feel aggrieved": https://www.commonlawcourt.com/wp-content/uploads/2019/09/LloydspresentationWestminsterCH4Sept2019.pptx

Under sections 85 & 87 of FSMA 2000, investors should be supplied with sufficient, suitable information to permit them to make informed decisions as to their investments and no misstatement or concealment of any material facts or circumstances are permitted. However, the disclosure requirements of a fully-fledged prospectus were avoided through the decision not to undertake a sale of Lloyds shares to the general public.

At the same time, investigation into criminal misconduct involving HBoS Reading, Lloyds Recoveries Bristol and the secondary lender closely associated with Lloyds, UK Acorn Finance appeared to have been either obstructed or refused. In the context of RBS, the FCA declined eight times to publish the Section 166 report into systemic wrongdoing by the bank's recovery unit, GRG and Bailey refused the request of the Treasury Select Committee to publish this report in September 2017. However, sales of taxpayer-owned shares in RBS resumed in June of the following year.

As Chief Executive of the FCA, Mr Bailey have, inadvertently or otherwise, contributed to a cover up of serious fraud by the two taxpayer-owned banks and thereby may have helped to facilitate securities fraud via the multiple sales of Lloyds and RBS shares to institutional investors, unaware of the widespread wrongdoing taking place within these banks.

7. Failure to recommend criminal prosecutions for the manipulation of LIBOR.

The London Inter-Bank Offered Rate (LIBOR) came into widespread use as a global benchmark in the 1970's and was brought under UK regulatory oversight by the Financial Services Act 2012, which created a criminal offence[29] for knowingly or deliberately making false or misleading statements relating to benchmark setting.

In July 2014, the FCA fined Lloyds Banking Group £105 m for manipulating its LIBOR (May 2006 – June 2009) and repo rate (April 2008 - September 2009) submissions. In total, Lloyds was fined the equivalent of £218 m by UK and US regulators. The bank was found to have manipulated its submissions at a time when it was simultaneously being bailed out by the UK taxpayer.

The Governor of the Bank of England, Mr Mark Carney wrote to Lloyds' Chairman, Lord Blackwell[30]: "*Such manipulation is highly reprehensible, clearly unlawful and may amount to criminal conduct on the part of the individuals involved. It reduced not only the amount of fees payable by the firms (Lloyds Bank and Bank of Scotland) but also the fees payable by other firms using the Special Liquidity Scheme*". In his reply, Lord Blackwell admitted there had been "*truly shocking conduct, undertaken when the bank was on a lifeline of public support*".

[29] http://www.legislation.gov.uk/ukpga/2012/21/section/91/enacted
[30] https://www.ft.com/content/f0d55584-1640-11e4-93ec-00144feabdc0

However, a secret recording which dates from 2008 obtained by the BBC implicates the Bank of England in the manipulation of LIBOR. In this recording[31], a senior Barclays' manager, Mr Mark Dearlove instructed their LIBOR submitter Mr Peter Johnson to lower his LIBOR rates, telling him: *"The bottom line is you're going to absolutely hate this... but we've had some very serious pressure from the UK Government and the Bank of England about pushing our LIBORs lower."* Mr Johnson objects, saying that this would mean breaking the rules for setting LIBOR, which required him to put in rates based only on the cost of borrowing cash. Mr Johnson says: *"So, I'll push them below a realistic level of where I think I can get money?"* His boss, Mr Dearlove replies: *"The fact of the matter is we've got the Bank of England, all sorts of people involved in the whole thing... I am as reluctant as you are... these guys have just turned around and said just do it."*

Nevertheless, in July 2018, the Serious Fraud Office (SFO) closed its investigation into Lloyds' manipulation of LIBOR, saying there was insufficient evidence to bring a case and that it did not meet the threshold required for a prosecution. The prosecutor claimed to have experienced difficulty in finding an expert prepared to provide evidence on the traders' behaviour. In October 2019[32], the SFO closed its entire seven-year investigation into LIBOR, saying that it had conducted a detailed and thorough review but that no further charges would be brought.

Together with the SFO, the FCA should have insisted that prosecutions be brought against those involved in manipulating LIBOR. Instead, two months after the SFO abandoned its investigation and set aside the recording which implicated the Bank of England in the manipulation of the benchmark, Mr Bailey was chosen to be its next Governor.

8. Failures in relation to the implementation and oversight of the Interest Rate Hedging Product (IRHP) review and redress scheme

In June 2012, the FCA concluded that there had been serious failings in the banks' sale of interest rate hedging products (IRHPs) and ordered a review[33]. However, the regulator decided that the best party to investigate the wrongdoing was the banks themselves and allowed them to appoint their own "independent" reviewers. The banks have been able to exclude customers from the review, delay the timing of the review, withhold information from customers and decide themselves the extent of any redress[34]. The FCA did not help matters by advising customers that they did not need to seek legal advice.

[31] https://www.bbc.co.uk/news/business-395483
[32] https://www.bbc.co.uk/news/business-50107320
[33] https://www.fca.org.uk/publication/archive/fsa-interest-rate-swaps-2013.pdf Page 3 executive summary: "In (June) 2012, we carried out a review that found serious failings in the sale of interest rate hedging products (IRHPs) to small businesses".
[34] https://lexlaw.co.uk/solicitors-london/lexlaw-raises-concerns-with-the-fca-on-its-implementation-and-oversight-of-the-irhp-review-redress-scheme/

Mr Bailey failed to rectify these repeated failings but approved, some seven years after the FCA had concluded that there was serious wrongdoing in the sale of IRHPs, the appointment of yet another independent review under John Swift QC., which will not be completed before September this year.

9. Ongoing failure regarding investigation of the alleged systemic forgery of signatures by Lloyds Banking Group

In July 2019, the Chairman of the All Party Parliamentary Group (APPG) on fair business banking, Rt. Hon Kevin Hollinrake MP and the Police & Crime Commissioner for Thames Valley, Mr Anthony Stansfeld took evidence[35] that Lloyds Banking Group had forged signatures on an industrial scale[36] on documents it had relied on in court to the Director-General of the National Crime Agency, Lynne Owens. They asked the NCA to investigate.

Ms. Owens passed the matter to Mr Graeme Biggar, the head of the National Economic Crime Centre (NECC), who concluded that the right bodies to make an initial assessment were the FCA and SFO. Ms. Owens stated that these bodies "*will consider whether there are sufficient grounds to open a criminal or regulatory investigation*".

If proven, the forgery of signatures on legal documents is undeniably a criminal act rather than merely a regulatory matter. However, the effect of Ms. Owens and Mr Biggar forwarding the matter of the forged signatures to the FCA and SFO for assessment, was to delay any prompt investigation. It is notable that Ms. Owens has declined, three times in writing, the request of the Treasury Select Committee to investigate - such a refusal is believed to be unprecedented.

By failing to investigate in a timely manner, Mr Bailey has contributed to the failure to bring criminal charges against Lloyds Banking Group.

About the author

William May has spent his career predominantly in the City of London, initially with the stockbrokers, Cazenove & Co. and mainly with the investment bank, S.G. Warburg. He takes full responsibility for the contents of this report and the opinions expressed therein.

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[35] http://www.appgbanking.org.uk/the-bank-signature-forgery-campaign/
[36] https://www.telegraph.co.uk/business/2019/07/09/mps-urge-authorities-probe-claims-banks-forging-signatures/ https://www.thetimes.co.uk/article/banks-forging-signatures-on-industrial-scale-dx8523rnj