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Small companies need a tribunal to take on the banks

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Who stands up for small companies when they fall out with big finance? It would be reasonable to assume that adequate protections are in place, given the clear imbalance in power, but the past decade has provided a surfeit of depressing evidence that often there is nowhere to turn when business owners are abused by bankers.

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From Royal Bank of Scotland's notorious Global Restructuring Group, a supposed turnaround unit that systematically mistreated thousands of companies, to Lloyds' mishandling of the fraud at the Reading branch of HBOS, which devastated scores of companies, a series of shameful episodes have left countless entrepreneurs across Britain skint, furious and sometimes even out of a home.



Smaller companies complain that they cannot take on the big banks when their businesses are damaged by misconduct

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Both scandals resulted in the creation of inadequate compensation schemes that merely added insult to injury. The same happened when banks mis-sold interest rate hedging products to thousands of small businesses.

We have a world-class judicial system, but access to it comes at price. A small business owner whose livelihood has been damaged or destroyed has little chance of being able to afford legal action.

And beyond costs, businesses face further hurdles. Business lending is not a regulated activity. Although Financial Conduct Authority rules provide the right to bring an action for damages for losses suffered as a result of breaches of regulation, this is

currently limited to “private persons”, which excludes almost all businesses.

And in court, the principle of *caveat emptor* appears to rule. Even when judges acknowledge mistreatment of companies, they often side with banks because lenders invariably can point to contracts that effectively disclaim the responsibility to be upfront and fair with customers.

I am sceptical as to whether we will ever be able to regulate banks effectively. So, as well as trying to stop these abuses from happening in the first place, we also need a mechanism that offers redress to the abused.

The FCA has acknowledged that small companies need more support. Their proposed solution, to expand the Financial Ombudsman Service, is welcome, but it still will leave many without access to justice.

The FOS is an alternative dispute resolution mechanism and it cannot compel the release of evidence or the attendance of witnesses and the majority of its determinations are made in private, so the guilty avoid scrutiny. In its consultation on the extension of the FOS, the FCA makes it very clear that there will remain a significant gap in access to dispute resolution even after any proposed extension of the service.

The City regulator has argued that it is doing what it can within the powers it has. It is the responsibility of government and

parliament to provide a broader solution for the lack of protection for small and medium-sized companies. We need to help those who won't be aided by an extension of the FOS, which in any case can only compel financial services firms to pay compensation up to £150,000.

To create a more level playing field between financial firms and businesses, and to address the twin issues of small companies' lack of legal rights and the gap in dispute resolution provision, the All Party Parliamentary Group on Fair Business Banking is calling for the enhancement of the legal rights of small businesses and the creation of a specialist financial services tribunal to rule on disputes.

The simplest way to extend the legal rights of small companies would be to extend the so-called section "right of action" in the financial services and markets act to small businesses. This would mean that those who suffer loss as a result of a rule breach have a right to take legal action for damages for the losses that result.

The creation of a new financial services tribunal would provide an invaluable additional forum in which disputes could be resolved cost-effectively. It could be modelled on existing tribunals, such as those for employment disputes, with members from business and financial services backgrounds to support the judge by providing knowledge and experience and the use of an inquisitorial as well as adversarial approach.

The tribunal would need legal powers to enforce disclosure of information and the attendance of witnesses. It could deal with cases in an appropriate manner depending on their nature and complexity, ensuring simple, fast and low-cost access to justice for claimants.

Ministers and even some of the banks likely to fund such a tribunal appear to be receptive to the idea, so let's not miss this opportunity to rebuild trust and help to give businesses the confidence to borrow again.

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