

Similarities between the Post Office and the FCA



Mark Bishop, 30 January 2024

Important: there are parallels, but they're not the same!

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|-----------------------------|----------------------------|--|-----------|---------------------|--|
| Post Office | Many (~700 PO, ~283 other) | Contested | Contested | Principal | Yes (inc. Simon Recaldin, Herbert Smith Freehills etc) |
| Financial Conduct Authority | Few (LIBOR scapegoats) | Where to start? (IRHPs alone: > £10bn) | Many | Enabler, accessory | Spectacularly |

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Examples

- Woodford Equity Income Fund
- Blackmore Bond
- Philips Trust Corporation
- Debanking - ideological and commercial
- IRHPs
- Borrowers in arrears
- Mortgage prisoners
- Peer-to-Peer lending platforms
- ... and for each of these, we have literally dozens of similar cases we don't have time to cover now

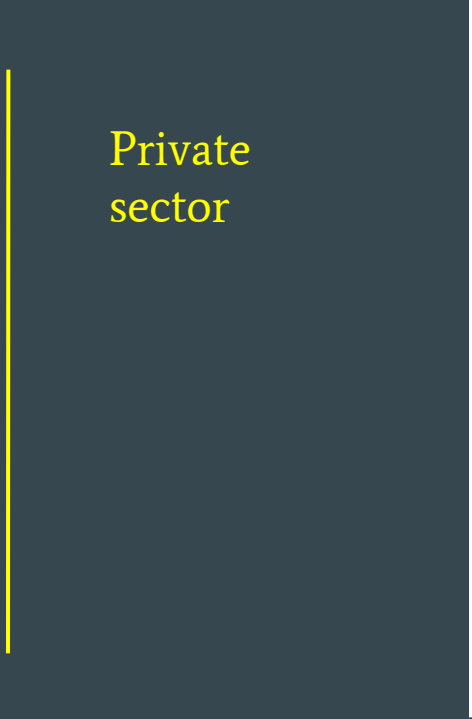
| | Scale | Prevent | Curtail | Secure redress | Sanction perps | Close loopholes | Admit, fix flaws |
|---------------------------|---------------------------|------------|---------|----------------|----------------|-----------------|------------------|
| Woodford | 540,000, £3bn+ | × | × | × | × | × | × |
| Blackmore Bond | 2800, £46bn | N/A | × | × | × | × | × |
| Philips Trust Corporation | 2000-2500, ?£50m | N/A | ? | × | × | × | × |
| Faragegate | Unknown | N/A | × | × | × | × | × |
| IF.com | 30,000+ | × | × | × | × | × | × |
| IRHPs | ~10,000, £10bn | × | ? | × | × | × | × |
| Loan arrears | Unknown | ✓ | × | × | × | N/A | × |
| Mtge prisoners | 50-200,000, ~£10bn | × | × | × | × | × | × |
| P2P platforms | Unknown | × | × | × | × | × | × |

Underlying causation is identical

Pre-Blair

Public
sector

Private
sector



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Post-Blair

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**'Arm's-
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Who's in charge?

- Public sector: management, civil servants, Ministers, Government
- Private sector: management, board (external NEDs), shareholders
- Arm's length bodies: 'we're independent'. Governance arrangements largely presentational (see FCA statutory panels); tacit Government protection

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See [*UK Postmasters vs. Rentier Capitalism*](#), Dan Hitchens

Three ways the FCA is worse than the Post Office

- You can't sue the FCA*:
 - I believe the transformative event for subpostmasters was the 555-claimant Group Litigation Order
 - This led to disclosures, which in turn enabled them to challenge convictions
 - The FCA is untouchable. So **the strategy that worked for subpostmasters would not work for us**
 - ... but there may be other ways we can use the courts to our advantage (see Link Fund Solutions Scheme of Arrangement, IRHP redress judicial review)
- Powerful voices in the industry gain from it being a Potemkin regulator
- And they have a lot of politicians on their side (mix of 'bought' and 'useful idiots')
- ... which may explain why the FCA is not accountable (in governance or civil law)

* human rights/bad faith carve-outs have never been tested; unlikely to get funding

Subpostmasters: 'We're fighting a war against an enemy owned by the British government, while we're just skint little people'



Us: 'We're fighting a war against an **underlying** enemy owned by, **but unaccountable to (and protected by)**, the British government, while we're just skint little people'



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NB: it's not just (or even mostly) about the Post Office, or the FCA...

What lessons can be learned?

- Use pattern of regulatory failures/cover-ups to persuade supportive politicians and media that accountability and other routes to justice needed
 - The right to redress through Complaints Scheme, backed up by the right to sue
 - Governance improvements: statutory panels, NEDs, Complaints Commissioner, oversight body
 - Make Financial Ombudsman independent of FCA
 - Civilly actionable private right of action - or enhanced Consumer Duty
 - Office of the whistleblower
- Use courts to demonstrate injustices, industry/regulator misconduct
- Could drama be a solution? Story would be *either* much more complicated *or* a drop in the ocean
- Use ‘honest majority’ in the industry to persuade ‘useful idiot’ politicians
- Out ‘bought’ politicians, so they become reluctant to sell themselves
- Present ourselves as ‘the adults in the room’, FCA as the badly-behaved kids

A final thought

- Post Office Management Services Limited is an FCA-authorized firm
- Its offerings include insurance (home, pet, life, travel), current and savings accounts, credit cards, foreign currency/money transfers
- Is the Post Office a ‘fit and proper person’, given the number and seriousness of the allegations levelled against it?
 - False accounting
 - Malicious prosecution, perverting the course of justice
 - Perjury, breaches of disclosure rules
 - Theft, extortion
 - Contempt of Parliament
 - Tax evasion, fraud (bonuses)
- Does it meet the FCA’s threshold conditions for capital adequacy, given Dan Neidle’s claim it may be insolvent?

Similarities between the Post Office and the FCA



- 'Corruption by neglect'
- Absence of accountability - governance, law, politics
- 'If you are neutral in situations of injustice, you have chosen the side of the oppressor' - Desmond Tutu
- 'It's not the crime, it's the cover-up that gets you in the end' - Richard Nixon