

Dear Sir,

I am a Chartered Accountant with 30 years experience in banking and finance and I have considerable experience of external audit within the financial sector, including the high street banks, and as an audit manager at the London head office of one of the high street banks. I do not represent any particular body.

I wish to make the following comments on the proposals for reform which I do not believe will be successful for the following reasons.

This enquiry is, in my opinion, being used to mask the FRC's own failure to properly investigate and punish the very failings or misdemeanours which led to the enquiry in the first place, being principally failures in the audits of banks and financial institutions in the run-up to the financial crisis.

The problem is that those who are guilty of those failings or misdemeanours are fully aware of the use of this tactic by the FRC (and a tactic it is), which means that they know that they can break the rules with impunity in the future and that the FRC will not punish them for doing so; it will merely initiate a further enquiry designed to 'stop such things happening again'. In this way, this sort of enquiry is self-defeating because it sends out a clear message that the FRC will never actually hold anyone to account.

The simple message is that rules are ineffective unless people know that they will be punished for breaking them (including negligence of course).

This the FRC and its subsidiary or associated bodies (mainly the AADB and the ICAEW) have signally failed to do in the most important cases, such as the collapses of Northern Rock and HBOS. This enquiry will therefore achieve the exact opposite of what the FRC claims it is intended to achieve because it misses the most important point, that there must be sanctions for breaking the rules and that those sanctions must be enforced.

Certainly the FRC and its subsidiary and associated bodies do conduct investigations and they do impose fines, but not in the most serious cases, as detailed above. My view is that these investigations are merely intended to allow the FRC and others to claim that they are 'taking steps', even though they know that those steps are wholly ineffective; the sanctions (fines) imposed are financially insignificant and are regarded by those on whom they are imposed as a mere overhead, a 'cost of doing business'. That these sanctions have no deterrent effect whatsoever is proved by the fact that the misdemeanours are repeated time and time again. In short, what is the deterrent value of a fine of, say, £1 million, or even £10 million, on a global business with a turnover of many, many billions, especially when the fine is imposed (as it often is) many years after the event? None at all.

So what can one say of an organisation which (1) refuses to investigate the most serious misdemeanours (or ensure that they are investigated by subsidiary or associated bodies), (2) when it does investigate misdemeanours imposes sanctions that are wholly ineffective and which it knows are wholly ineffective and (3) responds to the most serious breaches with the well-worn mantra 'we are taking steps to ensure that this doesn't happen again', which of course entirely ignores the necessity to impose effective sanctions (i.e. punish the guilty)? The answer is that a regulatory authority (whether the FRC, the police, the judiciary or any other such body) which intentionally and knowingly refuses to carry out its functions becomes complicit in the very misdemeanours or crimes\* it exists to prevent; it becomes, in short, a criminal organisation. In fact, one can say that an official organisation which refuses to enforce its rules is worse than the miscreant who deliberately or negligently breaks those rules. One expects a thief to burgle a house; one does not expect the police to cover up the fact that he has done so.

\*This includes widespread fraud in the mortgage application process (e.g.

self-certification).

The problem is therefore not that the existing rules are wrong, it is that they are not being enforced. The current recommendations will be equally ineffective for the same reason. The FRC is not only shutting the stable door after the horse has bolted, it has sent the horse a clear message that it can do what it likes without fear of punishment.

To illustrate the seriousness of this problem I only need to state that it has been necessary for me, as a Chartered Accountant, to take my own professional body (the ICAEW) to court to ask for a judicial review to force the ICAEW to investigate the collapse of Northern Rock and the conduct of the auditors of Lloyds Banking Group in relation to the 2008 accounts of that company and the auditor's failure to ensure proper disclosure the true impact of the bank's takeover of HBOS, which effectively made Lloyds Banking Group insolvent and reliant on state aid. These court proceedings are on-going.

In both of these cases (Northern Rock and Lloyds) there was very clear, indeed overwhelming, prima facie evidence that clearly demanded an enquiry by the ICAEW or AADB, even if only to address widespread public concern about the adequacy of the audit process, which, in the case of Northern Rock, even reached the point where the Economic Affairs Committee of the House of Lords expressed its astonishment that the auditors of Northern Rock had failed to see the warning signs. Even this was not enough to prompt the ICAEW/AADB to investigate. This conduct is to be contrasted with the conduct of the Institute of Chartered Accountants in Ireland which was very prompt in launching an enquiry into the conduct of the auditors of Allied Irish Bank.

In short, the ICAEW/AADB have fought a desperate rearguard action in an attempt (which has been successful so far) NOT to investigate the very serious failings in the audit process revealed by the recent financial crisis. These bodies, which are supposed to regulate the audit/accountancy profession, are, in fact, doing their utmost to protect it. When you ask the question 'Quis custodiet ipsos custodiet' ('Who shall guard the guardians themselves') with respect to the audit/accountancy profession, it is clear that the answer is NOT 'The AADB and ICAEW'.

There are, I believe, a number of lessons to learn from this:

1. Regulatory bodies must have a positive duty to act and must be pro-active in investigating potential breaches; they should not wait for people to complain to them.
2. There must be effective sanctions, which means that sanctions must be serious and they must be enforced.
3. Self-regulation of the audit/accountancy profession has demonstrably failed and public trust in the profession has collapsed. Ineffective self-regulation must be replaced by effective external regulation.

Relevant documents can be found at:

<<http://www.happywarrior.org/widows/widows01.htm>> Mr Graham Senior Milne Whistleblower alleges <<http://www.ianfraser.org/whistle-blower-alleges-flawed-pwc-audit-deprived-widows-policyholders-of-1-5-billion>> "largest sustained cooking of books in British financial history" by PwC McFall's committee <<http://www.ianfraser.org/the-real-reason-uk-banks-got-away-with-murder>> "ignored FSA's complicity in crisis" : His <<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/144/144>>

w284.htm> Submission to Treasury Select Committee

Mr Milne: <<http://www.happywarrior.org/widows/widows04.htm>> Legal action against the Institute of Chartered Accountants in England and Wales

<<http://www.fortfield.com/casefiles/Northern-Rock-complaint.ICAEW.Milne.pdf>>

Northern Rock complaint :

<<http://www.fortfield.com/casefiles/Lloyds-TSB-complaint.ICAEW.Milne.pdf>>

Lloyds/HBOS complaint :

<<http://www.fortfield.com/casefiles/ICAEW-letter.milne.13.April.2011.pdf>>

ICAEW April 2010 response :

<<http://www.fortfield.com/casefiles/mr-shannon-mp-tw5may2011email.pdf>>

FRC/AADB response

<[http://www.fortfield.com/casefiles/jr\\_application\\_02062011.pdf](http://www.fortfield.com/casefiles/jr_application_02062011.pdf)> His Application for Judicial Review - ICAEW - Northern Rock and Lloyds - PwC auditors

<<http://www.fortfield.com/casefiles/Grahm.Senior.Milne.Sir.Alan.Beith.MP-Defence.pdf>> FRC/AADB defences to Judicial Review -

<<http://www.fortfield.com/casefiles/Grahm.Senior.Milne.Sir.Alan.Beith.MP-order-plus-renewal-application.pdf>> Initial Judgment

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