



# BANKING & FINANCE LITIGATION UPDATE

ISSUE 77

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## DOMESTIC BANKING

### BANK OF ENGLAND

1. Bank of England figures for April indicate that lending to businesses fell for the seventh month in succession. Lending dropped by almost £2.5 billion despite attempts by the Bank to increase the flow of credit.

*Times, 3 June 2014*

2. The Bank of England is concerned about banks issuing too many "covenant light" loans. These loans do not contain many of the legal protections found in normal loans and are considered to be high risk as a result.

*Times, 27 May 2014*

### BARCLAYS

3. Barclays is planning to open mini-branches in Waitrose supermarkets following a successful trial at ASDA. Automated kiosks manned by Barclays' staff will enable customers to make deposits, view their balances and conduct other banking transactions.

*Sunday Times, 18 May 2014*

### HSBC

4. The pay policy of HSBC, including plans for up to 200 per cent of salary bonuses, has been backed by the bank's shareholders. 79.35 per cent of investors who attended the bank's annual meeting voted through a three-year remuneration plan, with 98 per cent voting to allow the bank to increase an EU cap on bonuses from 100 to 200 per cent of basic salary. HSBC chairman Douglas Flint said however, that more would be done to win shareholder approval.

*Telegraph, 24 May 2014*

### LLOYDS BANKING GROUP

5. The TSB will be valued at 10 per cent less than its book value when Lloyds Banking Group floats its subsidiary at the end of June. Lloyds has valued the TSB at £1.44 billion to ensure the flotation goes smoothly.

*Sunday Telegraph, 8 June 2014*

6. Lloyds Banking Group has withdrawn its tracker mortgages from the market, as has Skipton Building Society. Both Lloyds Bank and Halifax, which is also part of the Lloyds Banking Group, say that due to the low Bank of England Bank Rate they cannot offer a competitive enough tracker product to compete with the fixed rate mortgages available.

*Telegraph, 7 June 2014*

7. Documents issued as part of the flotation of TSB have revealed that Lloyds Banking Group will pay up to £450 million should TSB decide to upgrade its information technology system in the future, or if the bank is subject to a takeover. The payment is considered to be extremely unusual by analysts and will be viewed as advantageous to investors.

*Sunday Telegraph, 1 June 2014*

8. Lloyds Banking Group has upped its efforts to recruit more women by appointing KPMG partner Mary Hall as its new head of audit operations. The bank has committed itself to having 40 per cent of its 5000 posts filled by women by 2020 - at present the figure is 28 per cent.

*Telegraph, 30 May 2014*

9. The TSB flotation will begin in June this year, with Lloyds Banking Group confirming that it will sell one quarter of its shares in its subsidiary bank. About 20 per cent of these shares will be purchased by retail investors. Dividends will not be paid until 2017. Lloyds must sell the rest of the TSB by the end of 2015 to comply with EU rules.

*Guardian, 28 May 2014*

10. Five new non-executive directors have been appointed to the board of TSB ahead of its imminent flotation. The directors include Philip Augar, who previously had roles at NatWest and Schroders, and Dame Sandra Dawson, who held positions at both Barclays and the Financial Services Authority.

*Telegraph, 23 May 2014*

11. At its Annual General Meeting held in Edinburgh, more than 10 per cent of Lloyds Banking Group shareholders voted against the bank's remuneration report. Chief executive Antonio Horta Osorio could receive up to £7.8 million this year if all his performance targets are met.

*Times, 16 May 2014*

12. The chief financial officer at Lloyds Banking Group, George Culmer, has said he cannot give any assurances that it will still be possible to hold a sterling account in Scotland if the vote goes in favour of Scottish independence.

*Independent, 16 May 2014*

### **THE ROYAL BANK OF SCOTLAND**

13. House loans of over £500,000 from The Royal Bank of Scotland (RBS) will be capped at four times the earnings of borrowers and the length of the mortgages will be limited to 30 years. RBS is the second lender of late to restrict risky mortgage lending as worries about unsustainable house price inflation increase.

*Telegraph, 4 June 2014*

14. A report from pro-independence group Options for Scotland calls for the break up of RBS if the country chooses independence, with its Scottish division placed under the management of the Holyrood Government until it can be restored to the capital markets.

*Telegraph, 30 May 2014*

15. In order to sidestep oppressive new rules from the US Federal Reserve, RBS plans to cut hundreds of jobs in the US. Up to 400 jobs will be axed by the lender at its American mortgage operation in an attempt to lower its assets to under \$50 billion, the threshold at which the central bank rules take effect.

*Telegraph, 28 May 2014*

16. An IT malfunction at RBS resulted in customers having difficulty in accessing banking apps for RBS, Ulster Bank and NatWest for a period of 6 hours on 23 May.

*Telegraph, 24 May 2014*

17. RBS plans to reduce its interest-rate trading business. Both its rates prime broking and over-the counter clearing operations will be wound down as a result of a drop in profits caused by an increase in regulatory costs.

*Financial Times, 19 May 2014*

### **STANDARD CHARTER**

18. Radio Television Suisse has reported that Standard Chartered is to shut its Swiss private bank in Geneva. The lender, which has said it wants to concentrate more closely on Africa, Asia and the Middle East, had indicated earlier that it was planning to sell the operation.

*Independent, 27 May 2014*

### **DOMESTIC AND GENERAL**

19. Tesco has become the first supermarket to launch a current account, a move that puts it in direct competition with high street banks and which also forms part of the company's plans to shake up the retail banking sector. The retailer's 6 million customers and regular shoppers will be targeted by Tesco Bank as it launches an online account that will reward users with Clubcard points.

*Financial Times, 10 June 2014*

20. Senior industry figures have warned that unless there is more co-operation between leading banks and law enforcement agencies, the entire UK financial system is vulnerable to a cyber-attack.

*Telegraph, 9 June 2014*

21. Richard Banks, the chief executive of UK Asset Resolution (UKAR), the country's taxpayer-owned bad bank, has said that it will take the bank a decade to pay back to £38.3 billion that is owed to the Government. The 'bad bank' was created from the toxic debts of Bradford & Bingley and Northern Rock. UKAR has so far repaid over £10 billion of Treasury loans which resulted from the 2008 nationalisations of the lenders.

*Telegraph, 4 June 2014*

22. The three largest current account market challengers are on course to open at least 2 million accounts in 2014 as they step up their campaign to take on the top four high-street banks. Current accounts have become a significant battleground given the belief that having an existing current account relationship with a customer makes it easier to sell them credit cards, mortgages and savings accounts.

*Financial Times, 2 June 2014*

23. The chancellor commissioned Business Banking Insight survey, has revealed that 40 per cent of small businesses are not happy with the service offered by their banks, with many saying that they are treated as just "names on a list" by their lenders. Amongst small businesses - those employing nine or less people - only 60 per cent are happy with the service they get, a figure that went up to 65 per cent amongst medium-sized businesses - those employing ten to 249 people. The survey suggested that in the past year finance had not been sought by 85 per cent of businesses.

*Times, 29 May 2014*

24. A new report from the Financial Reporting Council ("**FRC**"), which examined 81 audits, has once again criticised big accountancy firms for a lack of rigour when checking the books of building societies and banks. The FRC is concerned that its numerous warnings over substandard audits still appear to be falling on deaf ears.

*Times, 28 May 2014*

25. Landmark legislation will see the Government force high street banks to refer small businesses to alternative lenders. Whilst banks have lobbied strongly against the plans, warning that the introduction of legislation will be costly and complex to implement, there is a determination from the Chancellor, Business Secretary and Prime Minister that the new rules will be introduced. The rules are designed to end high street banks dominance of the small business lending market, and will make it compulsory for them to automatically pass on customers who they turn down to alternative lenders.

*Telegraph, 27 May 2014*

26. Clydesdale Bank is to release the first plastic bank notes in Britain in 2015. The new £5 notes will have the picture of Sir William Arrol, the engineer who built the Forth Bridge, on the front and the issue will coincide with the 125th anniversary of its construction. The Bank of England will not issue its first plastic notes until 2016.

*Times, 22 May 2014*

27. In a key test of the government's legal aid reforms, the Court of Appeal has overturned a lower court ruling that had halted a complex fraud trial due to the defendants being unable to secure legal representation. The case has been closely watched due to the possible effect it could have on

other white collar fraud trials being prosecuted by the FCA, including prosecutions for alleged Libor interest rate benchmark rigging, and the FCA's biggest insider trading case, Operation Tabernula.

*Financial Times, 22 May 2014*

28. New figures have shown that the Financial Ombudsman Service ("**FOS**") received a record number of complaints from consumers in the past year, with four-fifths being about payment protection insurance. The year to April saw FOS receive 2.3 million enquiries, the equivalent of 40,000 a week.

*Financial Times, 20 May 2014*

29. Britain's banks will be named and shamed by a new body established to improve behaviour in the industry, if they do not "upgrade their standards". Sir Richard Lambert, who was asked by the chairmen of the country's biggest banks to set up the Banking Standards Review Council ("**BSRC**"), said that even though the body would not have any powers to punish banks or individuals, it would be a champion for better banking standards.

*Telegraph, 20 May 2014*

30. There has been another delay to the publication of the long-awaited report into the collapse of HBOS, with officials now resigned to the report not being published until 2015 at the earliest, over six years since the costly demise of the bank.

*Times, 20 May 2014*

31. With a new generation of lenders getting ready to hit the stock markets, UK banks could be set to help investors make a profit after taking a beating for a number of years. Those expected to pursue a listing include Lloyds Banking Group (TSB), Virgin Money, OneSavings Bank, Aldermore Bank, Metro Bank, Shawbrook, and Williams & Glyn.

*Times, 17 May 2014*

32. Regulators in Britain and the US have fined broker RP Martin £1.4 million (\$2.3 million) over allegations of manipulation of benchmark interest rates by its traders. £630,000 is being paid to the UK regulator, and \$1.2 million to the US watchdog.

*Telegraph, 16 May 2014*

33. The operator of silver's global benchmark, the 117-year old London silver fix, has announced that it will "fix" prices for the last time on 14 August. The announcement follows a decision by Deutsche Bank to withdraw from the benchmark setting panel, leaving just two banks on it - Bank of Nova Scotia and HSBC. Users will be consulted over the development of an alternative, the London Bullion Market Association said.

*Independent, 15 May 2014*

## EUROPEAN BANKING

### CREDIT SUISSE

34. Credit Suisse is contemplating joining forces with private investors to spin off a piece of its US fixed income business in a move to reduce capital costs. The Swiss lender partnered with high-speed trading group Tower Research to form an electronic market-making business for American government bonds called Wake USA. Credit Suisse is now considering selling its stake to external investors to enable it to deconsolidate Wake, which is a subsidiary, and release it from rules applicable to banks.

*Financial Times, 9 June 2014*

35. Credit Suisse has spoken to the Central Bank in Ireland to get authorisation to house some of its operations to Dublin. The Swiss bank is seeking permission to open a prime brokerage unit in the Irish capital and would create 100 new jobs in the first instance.

*Sunday Times, 25 May 2014*

36. The US Department of Justice has fined Credit Suisse \$2.6 billion after the bank owned up to helping US citizens evade tax. Credit Suisse pleaded guilty to the charges, the first bank to do so in response to criminal charges in the United States for over 10 years.

*Telegraph, 20 May 2014*

### DEUTSCHE BANK

37. Deutsche Bank has warned that it could face a "material" impact as a result of on-going investigations by global regulators into the possible manipulation of foreign exchange rates. Deutsche has suspended five of its traders in the Americas and other staff have been disciplined, as part of an internal investigation into manipulation allegations.

*Financial Times, 6 June 2014*

38. Shareholders at Deutsche Bank's annual meeting have criticised the bank over its decision to raise €8 billion of capital by tapping investors. Deutsche has announced that €6.3 billion will be raised via a rights issue, with a further €1.75 billion to come from the investment fund of the Qatari royal family. Questions have been raised by some investors, who see the decision as an about turn, given previous announcements that the bank intended to "organically" strengthen its balance sheet.

*Financial Times, 23 May 2014*

### EUROPEAN CENTRAL BANKING

39. Unveiling a series of radical measures to head off the threat of deflation, European Central Bank ("ECB") president Mario Draghi became the first major central banker to cut a key interest rate to less than zero, whilst also signalling a willingness to take more action, such as some form of quantitative easing, if required. A package of up to €400 billion of cheap loans for banks in the Eurozone was announced alongside the rate cuts in an effort to boost lending.

*Financial Times, 6 June 2014*

40. The ECB has warned that an increasing risk of a "sharp and disorderly unwinding", which could throw the Eurozone back into crisis, has been created by investors' global pursuit of higher profits in a low-interest rate environment. In its newly published twice-yearly report on financial stability, the ECB said that the search for higher returns now poses the greatest threat to the 18-nation bloc's financial stability.

*Telegraph, 29 May 2014*

41. Supervision by the ECB could leave the biggest banks in the Eurozone each facing an annual bill of €15 million. Up to 130 institutions with assets of over €30 billion will be overseen by the ECB in its new role as Europe's common banking supervisor.

*Telegraph, 28 May 2014*

## SANTANDER

42. Santander is implementing a number of changes to overdrafts on several of its current accounts. The complicated package of changes includes removing the limit on authorised overdraft fees for some accounts, and increasing the charges for unauthorised overdrafts on others. The changes will take effect on 19 August.

*Guardian.co.uk, 20 May 2014*

43. Ex-UBS trader Kweko Adoboli, whose unauthorised trading led to \$2.3 billion of losses at the bank, has been refused permission to appeal his conviction.

*Financial Times, 5 June 2014*

## EUROPEAN GENERAL

44. Pope Francis has dismissed the entire five-man Italian board of the Financial Information Authority, the Vatican's financial watchdog. The Pope has appointed four experts from Italy, Singapore, Switzerland and the United States to replace them.

*Times, 6 June 2014*

45. There are increasing fears that a new balance sheet stress test could push dozens of banks across Europe into liquidation. Thousands of lines of data from banks in the Eurozone are being reviewed by the ECB as part of its "asset quality review". According to senior banking sources, the tests are flushing out problem loans which have previously been hidden or disguised.

*Sunday Times, 25 May 2014*

46. As banks in Europe prepare for regulator stress tests and tougher capital rules, equity raising by the region's financial institutions has reached a record high, with over €36 billion having been issued for the year to date, an increase of 70 per cent compared to the same period in 2013.

*Financial Times, 23 May 2014*

47. Three banks - Credit Agricole, HSBC and JP Morgan - have been charged by the European Commission with running an interest rate rigging cartel. The three, in an unusual act of defiance, have refused to settle over the allegations against them. The case relates to an alleged cartel to fix

the interbank lending rate charged between European banks, known as the Euribor.

*Times, 21 May 2014*

48. Bafin, the German financial regulator, has announced that it has concrete evidence of attempts by banks to manipulate the foreign exchange markets. The news has strengthened fears that banks in Europe and the United States still face serious legal challenges.

*Financial Times, 21 May 2014*

49. Regulators in Europe are looking to clamp down on banks selling debt to their own retail customers amid concerns about how much savers understand about the risks of holding such assets. The European Banking Authority is concerned by the practice which banks have embraced in an effort to strengthen their capital buffers.

*Financial Times, 20 May 2014*

50. The Vatican's Financial Information Authority ("AIF") has said that the number of reports of suspicious financial transactions at the Vatican jumped from six in 2012, to 202 in 2013, with the increase put down to better vigilance following reforms at the Vatican bank. Whilst declining to provide specific percentages or numbers, the AIF said the bulk of the suspicious transaction reports received were in relation to the Vatican bank - the Institute for Works of Religion (IOR). Of the reports, five were deemed serious enough to be referred to the Vatican prosecutor.

*Guardian, 20 May 2014*

## INTERNATIONAL BANKING

### BANK OF AMERICA

51. Following the suspension of its plan for a \$4 billion share buyback as a result of an accounting error, Bank of America has resubmitted its revised capital plans to the Federal Reserve.

*Financial Times, 27 May 2014*

## CLOSE BROTHERS

52. In the three months to 30 April, property lending for Close Brothers was "particularly good" and seasonal demand for vehicle finance aided the financial services group in lifting its loan book by 5 per cent to £5.1 billion in the same quarter. The bank saw a 4 per cent increase in assets under management to £9.6 billion and trading at its market-maker, Winterflood, continues to be steady.

*Independent, 24 May 2014*

## GOLDMAN SACHS

53. Bids of over €300 million are being prepared by Goldman Sachs and Lone Star for a massive portfolio of land-development loans being sold by RBS subsidiary, Ulster Bank. The loans are secured on over 1,000 acres of land zoned for residential development, with the variety of the land-bank sizes and the spread of locations expected to lead to considerable bid interest.

*Sunday Times, 18 May 2014*

## MORGAN STANLEY

54. Morgan Stanley has agreed the sale of petroleum distributor TransMontaigne, as it makes further reductions in its commodities trading division. The sale to NGL Energy Partners effectively ends the bank's ownership of physical oil infrastructure.

*Financial Times, 10 June 2014*

## INTERNATIONAL GENERAL

55. The American Financial Industry Regulatory Authority (Finra) has handed out some of its toughest penalties, fining a number of Wall Street banks \$1 million each for providing inaccurate information. The fines are in relation to electronic "blue sheet" data that brokers and dealers are required to provide to US watchdogs during investigations into forms of suspicious activity, such as insider trading. There was however no suggestion from Finra that lapses were wilful or intentional. Fines were handed to Barclays, Goldman Sachs, Merrill Lynch and Pierce, Fenner & Smith, a division of Bank of America.

*Times.co.uk, 5 June 2014*

56. An average pay rise of 10 per cent was given to top banking executives in 2013, with the widening remuneration gap between the two sides of the Atlantic highlighted by the fact that the bosses of US banks were handed packages that were more generous than those given to their European counterparts.

*Financial Times, 3 June 2014*

57. Much needed reforms are being delayed, and a destabilisation of the global economy is being risked, due to the financial sector's "fierce industry push-back", the managing director of the International Monetary Fund, Christine Lagarde, has warned. A conference in London was told by Ms Lagarde that industry attempts to stop the introduction of tougher rules were the primary reason that progress towards building a safer financial system had been "too slow".

*Financial Times, 28 May 2014*

58. A new survey has revealed that, among those aged 18-34, almost four in 10 would switch to a bank that did not have a physical network, with a large portion of consumers attracted to a Walmart or Google bank. The survey forms part of a new report by consultants Accenture.

*Financial Times, 27 May 2014*

59. For the first time in two decades, local governments in China are to be allowed to sell bonds in a move that is a major step towards tackling a looming public financing crisis and containing the shadow banking sector that municipal authorities depend on for funding. The pilot scheme announced by China's finance ministry will see 10 local governments allowed to sell bonds on their own. The 10 are from mostly well managed and wealthy cities and provinces, including Guangdong, Beijing and Shanghai.

*Financial Times, 22 May 2014*

60. A change to the US Federal Reserve's exit strategy from easy monetary policy has been called for by one of its most influential officials. The central bank should continue reinvesting its mortgage portfolio until after it has raised rates, according to the vice-chairman of the interest rate setting Federal Open Market Committee, and president of the New York Fed, William Dudley. The central bank's current exit strategy calls for reinvestment to be stopped prior to the rates being increased.

*Financial Times, 3 April 2014*

## PRESS RELEASES

### 61. FCA finalises rules to improve the protection of client money and custody assets

The FCA has finalised changes to the client money and custody assets (client assets) rules. These changes affect approximately 1,500 FCA regulated firms that carry out investment business, from the largest investment banks to the smallest investment advisor, who collectively hold over £100 billion of client money and £10 trillion of custody assets.

*Financial Conduct Authority, 10 June 2014*  
<http://www.fca.org.uk/news/fca-finalises-rules-to-improve-the-protection-of-client-money-and-custody-assets>

### 62. Bank of England launches new framework to test for cyber vulnerabilities

In a speech at the British Bankers' Association, Andrew Gracie, Executive Director, Resolution at the Bank of England, formally launched a new framework to help identify areas where the financial sector could be vulnerable to sophisticated cyber-attack. This is part of the Bank of England's response to the Financial Policy Committee's recommendation to test and improve resilience to cyber-attack.

*Bank of England, 10 June 2014*  
<http://www.bankofengland.co.uk/publications/Pages/news/2014/088.aspx>

### 63. Bank of England maintains Bank Rate at 0.5% and the size of the Asset Purchase Programme at £375 billion

The Bank of England's Monetary Policy Committee has voted to maintain the Bank Rate at 0.5%. The Committee also voted to maintain the stock of purchased assets financed by the issuance of central bank reserves at £375 billion.

*Bank of England, 5 June 2015*  
<http://www.bankofengland.co.uk/publications/Pages/news/2014/006.aspx>

### 64. Appointment of new Directors

The Bank of England has announced the appointment of new Directors. When the Governor launched the Bank's Strategic Plan in March, he announced the establishment of new Director positions, below the level of Executive Director. The new Directors will play an

important leadership role across the Bank, not just in managing their areas, but also executing the Strategic Plan and representing the Bank.

*Bank of England, 30 May 2014*  
<http://www.bankofengland.co.uk/publications/Pages/news/2014/085.aspx>

### 65. Help to Buy: opening up home ownership and boosting housing supply

New statistics show how Help to Buy is opening up home ownership to thousands and is supporting the government's long term plan to help hardworking people secure a better future for their families. In total 27,861 households have been helped by the scheme, which continues to overwhelmingly benefit first-time buyers, with the vast majority of sales outside of London and at prices well below the national average.

*Prime Minister's Office & 10 Downing Street, 29 May 2014*  
<https://www.gov.uk/government/news/help-to-buy-opening-up-home-ownership-and-boosting-housing-supply>

### 66. Your chance to help rebuild Britain's saving culture

The British Banking Association (BBA) has launched a public consultation to find new ways to encourage more people to save. Economists, consumers groups, academics and members of the public are invited to submit evidence and ideas about how to address the sharp decline of savings levels over the past four decades. Respondents to the Future of Saving consultation will be invited to answer five questions, including whether they would support the creation of new work-based savings products, a proposal backed by the BBA.

*British Banking Association, 27 May 2014*  
<https://www.bba.org.uk/news/press-releases/your-chance-to-help-rebuild-britains-saving-culture-2/>

### 67. Record numbers of disputes – as people look for honest answers: Ombudsman service publishes annual review

The Financial Ombudsman Service has published its annual review for 2013/2014. During the year the ombudsman answered 2.3 million enquiries from consumers, 40,000 every week.



The ombudsman settled a record 518,778 disputes, more than double the number the previous year. Payment protection insurance (PPI) made up 78 per cent of all cases, with the number of PPI complaints rising 6 per cent to 399,939.

*Financial Ombudsman Service, 20 May 2014*

<http://www.financial-ombudsman.org.uk/news/updates/annualreview-May-2014.html>

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