BRIEFING – 28.11.2022

Spotlight on Corruption's case against the British Business Bank and Information Commissioner for the names of companies that received government-backed Covid loans

In a three-day hearing this week, the First-tier Tribunal will hear Spotlight on Corruption's case against the British Business Bank and Information Commissioner for their refusal to disclose the names of companies that received taxpayer-backed support under the government's COVID-19 loan schemes.

These schemes were vital to protect British businesses during the pandemic and may have saved 150,000-500,000 businesses from going under.[1]

However, they have also been subject to exceptionally high losses, particularly due to fraud. There has been mounting public concern, not least by independent bodies such as the National Audit Office (NAO) and by the Public Accounts Committee in Parliament, about how these schemes were designed and administered.

According to the latest data, lenders have so far identified £1.1 billion of suspected fraud. The 2021/2022 Annual Report from the Department for Business, Energy & Industrial Strategy (BEIS), released in October, states that a reasonable estimate of fraud in the Bounce Back Loan Scheme is 12% of what was lent. This equates to £5.6 billion.

This is money that could have been invested in public services. Spotlight estimates that this sum could have gone to recruit 20,740 new nurses or to pay for 6,000 police officers over 10 years.

Losses to the public purse overall, including write-offs where borrowers fail to repay their loans, are likely to be significantly higher. In October 2021, the Office for Budget Responsibility estimated that £23.1 billion would be written off over the lifetime of the loan schemes, £19.7 billion through BBLS.[2]

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1 https://www.british-business-bank.co.uk/press-release/covid-19-loan-guarantee-schemes-may-have-saved-between-150000-and-500000-businesses-and-between-500000-and-2-9m-jobs-finds-initial-evaluation/

2 https://obr.uk/docs/dlm_uploads/CCS1021486854-001_OBR-EFO-October-2021_CS_Web-Accessible_v2.pdf

What we're asking for

We are seeking publication of the names of companies that received government-backed loans under four COVID-19 taxpayer-backed loan schemes introduced in spring 2020 to support business during the pandemic:

- the Coronavirus Business Interruption Loan Scheme (CBILS),
- the Coronavirus Large Business Interruption Loan Scheme (CLBILS),
- the Bounce Back Loan Scheme (BBLS) and
- the Future Fund Scheme (FFS).

We are ***not*** seeking the names of sole-traders, or limited liability partnerships that received loans in this case, purely the names of companies who received support.

Some of this information has already been made public since we made our request in 2020 under European state aid rules that required publication of state support over €100,000. This includes:

- 50.5% of companies receiving taxpayer supported loans under CBILS;
- 74.8% of companies receiving taxpayer supported loans under CLBILS.

Just 2.4% of companies receiving such support under BBLS have been disclosed. Only the companies that received the FFS whose loan was converted into equity have so far been disclosed.

Although administered through commercial lenders, Spotlight's case is that these are not routine commercial loans. CBILS and CLBILS were backed with 80% guarantees by the British Business Bank and BBLS were backed with 100% guarantees. Under some of the schemes, the Government also covered the first year of interest payments.

When they applied for loans, borrowers acknowledged that information they provided to the BBB may be released under the Freedom of Information Act, although the extent to which borrowers knew this would happen is disputed by the BBB.

Background to the request

In June 2020, Spotlight on Corruption, jointly with the Fraud Advisory Panel and Transparency International UK and other fraud experts, wrote to then-Chancellor Rishi Sunak offering to help develop counter-fraud measures and calling for the names of loan recipients to be published in order to deter and detect fraud.[3] The request was refused.

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3 https://www.fraudadvisorypanel.org/wp-content/uploads/2020/10/FAP-Letter-to-Chancellor-of-Exchequer-Loan-Transparency-16Jun20.pdf

In July 2020, Spotlight submitted a Freedom of Information request to the British Business Bank for the names. This was rejected in August. After an internal review request was refused in October 2020, we filed a complaint to the Information Commissioner.

In December 2021 the Information Commissioner upheld the BBB's decision although the Commissioner found the balance of whether to publish or withhold the names was "*finely balanced*" due to the unprecedented circumstances and large sums of money involved. That fine balance will be considered next week by the Tribunal.

Mounting public concern about the loans

Although the case will rest on the BBB's decision to withhold the names at the time it was taken, a considerable amount of information has emerged from independent reviews and parliamentary inquiries about the significant vulnerabilities in the loan schemes.

These include:

- An estimate in July 2020 by the Office for Budget Responsibility that £16.9 billion would be lost through the loan schemes (95% of which related to BBLS loans) with a worse case scenario of £33.7 billion.

- A report in October 2020 into the BBLS by the NAO which found that the fraud risks were very high in the scheme, and that as a result of fraud and credit risks, between 30-60% of borrowers were likely to default. The report also revealed that the BBB had itself raised serious concerns about fraud risks and vulnerability to organised crime in the BBLS and had sought a Ministerial Direction to go ahead with it.

- A report by Parliament's Public Accounts Committee in December 2020 into the BBLS, which found that losses from the scheme might be in the region of £15-26 billion, and that Government lacked the data to assess fraud in the scheme.

- A further report in December 2021 by the NAO into the scheme which found that the prioritisation of speed, lack of upfront counter-fraud measures and reliance on self-certification in the scheme would result in potential losses of up to £5 billion. It also found that the £32 million assigned to recover fraudulent funds and the ambition to recover just £6 million was "inadequate".

- A further report in April 2022 by the Public Accounts Committee, which found that in its view the government had not done all in its power to prevent fraud, that it lacked data to hold lenders to account, and that it had no long term plans to recover money.

- Evidence given in March 2022, by former counter-fraud minister Lord Agnew, before the Treasury Select Committee that revealed that BEIS had had just two officials with limited counter-fraud experience, BBB had no expertise in the area and the Cabinet Office counter-fraud function was not consulted in the establishment of the BBLS.[4]

[4] https://committees.parliament.uk/oralevidence/9878/pdf/

Comparison with the US

Following a court case brought by media and civil society in the US in November 2020, the names of those who received US government loan support schemes – the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loans (EIDL) program – as well as the amounts borrowed, were published.

The Court ruled that release of the data would:

- allow "*meaningful evaluation of whether the [schemes] were … distributed fairly, equitably, and devoid of fraud; and whether the programs are achieving their purpose*," and
- reveal "*a vast array of previously unknown information concerning a substantial component of a government aid program of massive proportions*."

This data is now easily accessible and searchable online. It has led to important media revelations in the public interest. There is no evidence that businesses named in these disclosures have been subject to vigilante action or have suffered any kind of harm.

Why we're asking for transparency

We are bringing this case for the following reasons:

1. **Greater transparency in who received loans will aid counter-fraud efforts and recovery of fraudulently obtained loans**

If the names of companies receiving the loans had been published back in 2020, as we and other civil society organisations requested, we believe the projected huge losses in the schemes could have been avoided. Fraudsters would have been unlikely to have targeted a scheme if there had been publication at the start.

Publication now would help maximise recovery of public funds. Public scrutiny and analysis by the media, academia, civil society and others, would support the Government's efforts to identify fraud and recover losses.

The National Investigation Service has so far opened investigations into BBLS fraud with a total value of £160 million and made 49 arrests. That means that less than 3% of the potential £5.6 billion lost to fraud has been investigated.

Most borrowers will not have committed fraud, and the simple fact of taking out a loan does not mean that an adverse inference should be drawn about a company. But all borrowers were receiving state aid under preferential terms with little to no due diligence during a public health emergency and looming economic crisis. Publication of all names to help law enforcement bodies identify rogue actors is a price worth paying for everyone.

2. **Greater accountability for government decision-making in relation to the schemes and learning lessons for the future.**

As Lord Agnew told the BEIS Select Committee, “Taxpayers have paid for this, and they should know what is happening.”

Transparency about public spending matters and accountability for how decisions are made that impact on taxpayer funds is crucial.

Discovering what went wrong in the administration of these schemes is essential to learn the lessons for future bailouts and countering fraud more generally. As the Public Accounts Committee stated in its report on Fraud and Error in June 2021, the Government should look at developing a presumption that beneficiaries of government support schemes are published. The Government rejected that recommendation but we hope this case will get them to think again.

3. **Shedding light on the role of commercial lenders and bank insiders**

We need urgent transparency about the role of commercial lenders and bank insiders, as David Clarke’s – former chair of the Fraud Advisory Panel – powerful witness testimony will detail.

Some lenders were responsible for disproportionate levels of error, including 3 of the 7 main lenders providing 87% of the loans to companies that had already dissolved; and 2 of the 7 responsible for 81% of loans paid out to companies that were incorporated after the Covid pandemic had started.

BEIS and the BBB are heavily reliant on lenders to identify fraud and fix fraud risks. However, lenders may not want to disclose information for fear of repercussions from regulators or of a negative impact on their reputation. Lenders meanwhile may not be fully incentivised to identify fraud if it impedes their ability to recover losses from Government.

In April this year, banks had withdrawn claims of just £45 million where they have recognised their own culpability.

Creating a public repository of loan scheme data would enable analysis and data matching, to identify trends, weaknesses and problems in the system, including instances of insider fraud.