

First witness statement of David Michael Clarke
Filed on behalf of the first Appellant
Date: 20 July 2022

Appeal No. EA/2022/0014 and EA/2022/0061

**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE
FREEDOM OF INFORMATION ACT 2000**
BETWEEN:-

**(1) SPOTLIGHT ON CORRUPTION (EA/2022/0014)
(2) JAMES FRANCIS PEARCE (EA/2022/0061)**

Appellants

-and-

**(1) INFORMATION COMMISSIONER
(2) BRITISH BUSINESS BANK**

Respondents

**FIRST WITNESS STATEMENT OF DAVID MICHAEL CLARKE
FILED ON BEHALF OF THE FIRST APPELLANT**

I, David Clarke, am the former Chair of the Fraud Advisory Panel (FAP) charity, and, will say as follows:

1. I have been asked by the first Appellant, Spotlight on Corruption, to provide a witness statement in this matter in relation to the necessity and proportionality of publishing the names of companies that received taxpayer-backed loans under the Government's Bounce Back Loan Scheme (BBLs).
2. The facts and matters set out in this witness statement are within my own knowledge unless otherwise stated, and I believe them to be true.
3. I drafted this witness statement myself and these are my own words.
4. Where I refer to information supplied by others, the source of the information is identified. Facts and matters derived from other sources are true to the best of my knowledge and belief.

Professional Background and Public Service

5. I am a counter-fraud professional, retired City of London police officer and Director of the National Fraud Intelligence Bureau (NFIB) and the former Chair of the FAP charity, the trusted, independent voice of the counter-fraud profession. Since June 2020, I have regularly called for publication of names of companies that received BBLs. Publication is now necessary because serious fraud has happened and analysing the information will help to detect and prevent serious crime. Specifically, the detection of companies that received help from professionals within the financial institutions known as 'Bank Insiders' (and those connected to them). These are offenders that used their inside knowledge to commit fraud against the BBLs scheme. This is necessary to identify those companies involved and prevent offenders from committing more crime in the future or illegally disposing of money they obtained by defrauding the BBLs.
6. At the outbreak of the COVID19 pandemic in the United Kingdom, I established and led the FAP COVID-19 Fraud Watch group. This body united over 70 trusted parties including the Cabinet Office, Law Society, City of London Police and Department for International Trade and shared information and intelligence to protect the UK against COVID related fraud. It initially met weekly online and operated for six months. All intelligence was promptly shared with the NFIB and other relevant partners.
7. For over 30 years, I served as a police officer with the Royal Air Force, City of London Police and the United Nations International Police Task Force in Bosnia & Herzegovina. I am also a professional consultant and special advisor on policing to governments and businesses in Jordan, Armenia, Ukraine, Georgia, Lithuania, Cyprus and other countries.
8. As a Detective Superintendent with the City of London Police Fraud Squad, I was a member of the Attorney General-led Fraud Review that reported in 2006. I was responsible creating and leading the National Fraud Intelligence Bureau (NFIB), the Know Fraud intelligence system, National Lead Force for Fraud (NLF) and Economic Crime Training Academy that emanated from the Fraud Review. My responsibilities included negotiating with the Home Office, police forces in England & Wales, and I requested the changes to the National Crime Recording Standards (NCRS) to permit the public to report fraud centrally.

Justification for Publishing the Information.

9. Publication will ensure that fraud against the BBLs is detected and prevented by enabling respected counter-fraud agencies to electronically match the names of companies that received BBLs against data held in Companies House and other publicly available records. Rules will be applied to identify evidence of

companies that may have been used to facilitate BBLs fraud that meets the criteria for the public to report fraud to the police. These standards are set out in the NCRS issued by the Home Office.

10. This form of ethical data matching has been widely used by public and private sector bodies for many years to identify company fraud and assess the credit worthiness of companies. In this instance, suspected fraud that meets the NCRS and is identified because of data analysis will be immediately reported to the police to help them to commence an investigation and recover losses.
11. Not publishing the names of companies that received BBLs will mean that data matching and analysis independent of the banks that granted loans will not take place because the data is not available to match. Consequently, companies that were able to defraud the BBLs system by receiving help from Bank Insiders may remain hidden forever and not be reported to the police nor recorded in accordance with the NCRS. This will result in companies engaged that benefited from fraud evading justice and keeping the money they obtained fraudulently through the BBLs. Moreover, without the available company data, the police and public will have no idea of the nature and scale of fraud against the BBLs.
12. An honest member of the public would consider that publication and analysis of the information is necessary because:
 - (a) The suspected fraud against the BBLs is reported to be very high and taxpayers are liable for losses incurred by lenders.
 - (b) Bank insider fraud is a significant crime threat to banks and the UK public as illustrated in cases such as the HBOS Reading scandal. This case saw six people including bank employees and others being jailed over a £245m loan fraud which took place during 2003 to 2007.
 - (c) Persons within the BBLs lending institutions may have used their inside knowledge to commit fraud against the BBLs system (or enable others to do so). One such case of this has already been reported.
13. On 23 January 2021, The Guardian newspaper and other news channels reported that the National Crime Agency (NCA) had arrested three men who worked for the same London financial institution on suspicion of using 'specialist knowledge' to commit BBLs fraud. This article is available on The Guardian website entitled, 'Three men arrested amid inquiry into £6m Covid loan fraud. National Crime Agency says it suspects specialist knowledge was used to scam bounce-back scheme'.

14. An honest member of the public would deem publication and analysis of the information to be proportionate in the circumstances because: (a) Without the available company data, there is no alternative way to match and analyse the information to detect BLS fraud committed by Bank Insiders. This is because the lenders either cannot or will not identify Insider Fraud and report it to the police (b) There is significant risk that offenders may still occupy positions of trust within lending organisations, devoid of scrutiny. Such offenders may well have money and assets that could be seized and returned to the public purse and (c) Law abiding citizens are especially appalled when they learn of Bank Insiders who are corrupt.
15. This was how Judge Martin Beddoe described the Bank Insiders in the HBOS scandal who used money stolen from victims and honest companies to fund 'luxury holidays, bling and sex parties'. This article was published on the BBC News website on 2 February 2017 entitled, 'Ex-HBOS banker 'sold his soul for swag'.
16. An honest member of the public would consider it necessary and proportionate for the police to investigate a company that has been helped by a Bank Insider when evidence is presented to them. This is because according to the UK National Strategic Assessment of Serious and Organised Crime 2020 (NSASOC), corrupt individuals in the financial sector present a significant threat to the UK. Section 177 on page 58 of the NSASOC states, 'Intermediaries continue to be key to facilitating and negotiating bribes, by arranging the movement of illicit funds. They are typically 'professional' in nature, for example solicitors or bankers. According to the Serious Fraud Office, there are more UK-linked individuals and companies acting as intermediaries than previously thought. The NSASOC dated 2020 is published on the National Crime Agency website.
17. The suggestion that lenders do not have the internal processes and technologies to detect and prevent serious fraud and money laundering is based on knowledge of a specific weakness that the FAP reported to government Ministers by the FAP in August 2020. This is also highlighted by the recent £264m fine against NatWest following their corporate criminal prosecution for money laundering involving Fowler Oldfield, a small jewellery company in Bradford.
18. In her Sentencing Remarks on 12 December 2021, Mrs Justice Cockerill said, 'during the five-year period of Fowler Oldfield's relationship with NatWest, it deposited a total of approximately £365m with the Bank, of which approximately £264m was in cash. Almost all of this cash was deposited after a significant change in Fowler Oldfield's business model which commenced in November 2013, with approximately £201m in cash being deposited between November 2013 and June 2016'.

19. She added that, 'At the height of the activity on the account, Fowler Oldfield was depositing up to £1.8m in cash per day with NatWest. During the Indictment Period between 8 November 2012 to 23 June 2016, approximately £287m was deposited into the Fowler Oldfield accounts with a rapid escalation'. These situations included, 'the deposit of such large sums of cash that they were brought in in black bin bags, which tore because of their weight, and sums so large that the bank's safes were inadequate to store them.
20. Justice Cockrill described how Fowler Oldfield remained a customer of Nat West until 2016, when West Yorkshire Police (WYP) uncovered what it suspected was a large-scale money laundering operation run out of Fowler Oldfield. The Bank agreed to cooperate with the WYP investigation and thereafter submitted 13 suspicious activity reports (SARS) which retrospectively reported conduct on the account including conduct dating back to 2013 and sought consent for account closures.
21. The remarks also include the content of a letter dated 9 December 2021 from the Chairman and Chief Executive Officer of NatWest on behalf of the NatWest Board in which they expressed deep regret and apologised for,

'The disappointment and concern that they will have caused to our customers, staff, shareholders and regulators'. The letter explained that NatWest's programme of investment will include a further £1 billion over the next five years in strengthening and upgrading our financial crime systems and controls, particularly in the areas of customer screening, transaction monitoring and customer due diligence'.
22. Fowler Oldfield case and admission by the Board of NatWest that £1 billion is to be invested to upgrade financial crime controls, in particular customer due diligence appears to be an admission that existing technologies and controls are inadequate. Thus, it can be seen how culture, technology and system failures make it a challenge for financial institutions to detect crime. Worst of all, they appear to be reluctant or very slow to report suspected crime to the police as in the NatWest case.
23. A statement worthy of note in the NatWest letter is the following: 'We wish to convey the bank's commitment to being a hostile and unattractive environment for financial crime and to working as closely as possible with industry bodies, law enforcement agencies and regulators to help to protect the customers and communities that we serve. That gives me the impression that the Bank would take action to report BBLs fraud to the police so they can be recorded in accordance with the NCRS and investigated.
24. In June 2020, the FAP Covid-19 Fraud Watch group which I chaired, became aware of a threat to the BBLs. On 16 June 2020, I wrote a letter to Chancellor of the Exchequer Rishi Sunak MP. This was co-signed by

Rosalind Wright QC, former head of the Serious Fraud Office, Professor Mike Levi, Cardiff University, Susan Hawley, Spotlight on Corruption and Duncan Hames, Transparency International.

25. In this letter we warned the Chancellor that, *'The lack of transparency provides an opportunity to defraud the UK'*. Adding there was, *'The likelihood that fraudsters - in collusion with professionals such as rogue bank insiders and lawyers will see the BBLs and CBILs loans as a way to obtain a loan for a company that is (a) being used to perpetrate economic crime or (b) was known to be unviable before COVID-19, and the money will be diverted to fraudsters or used to pay off debts to the bank and others'*
26. We added that, *'Publication of the information will help to deter and detect crime by enabling the public and companies to check the credit worthiness of customers and suppliers. Law enforcement and credit reference agencies will also be able to conduct research and data matching to identify crime using established techniques used by the National Fraud Initiative'*.
27. To address the matter of proportionality, we highlighted that, *'To date, UK Finance has published details of only 8 companies that received loans. By contrast, government has published details of all 39,286 Innovate UK grants to UK companies since 2004 and the amount awarded.'*
28. It appears that in June 2020, UK Finance considered it to be necessary and proportionate to publish the names of 8 companies that received BBLs and CBILs, some with the amount loaned. The companies were:
 - a. Little Critters Brewing Company – Sheffield (BBLs granted by Barclays).
 - b. Alternative Airlines – Surrey (secured a loan from Barclays through the CBILs).
 - c. Charles Stamper – Edinburgh (six-figure loan from Lloyds through the CBILs).
 - d. Task Contract Services – Newark (£250,000 finance package through CBILs).
 - e. Rap Industries - Peterborough (CBILs from Barclays).
 - f. Old Curiosity Distillery – Edinburgh (Secured a £250,000 loan from Royal Bank of Scotland through CBILs).
 - g. West Group - South Hampshire (Received a package of support from Barclays through the CBIL Scheme and a trade finance facility).
 - h. Ministry of Furniture - Port Talbot (The business received a six-figure invoice finance facility from Lloyds).
29. The above information was published the UK Finance website under the title: **LENDERS BACK 750,000 BUSINESSES WITH MORE THAN £31 BILLION THROUGH COVID-19 LOAN SCHEMES**. Furthermore, our letter added, *'Companies that are granted BBLs or CBILs loans are considered to be a viable business and no stigma is attached. Recipients know that these are taxpayer-backed schemes and would expect a level of transparency'*.

30. Our request for the Chancellor and banks to act was reported by the London Evening Standard on 26 June 2020 under the headline, 'Fraud chiefs warn Rishi Sunak over risks of millions of pounds being stolen under state covid loans due to lack of transparency. Top white collar crime experts urge publication of companies so checks can be made on borrowers'.
31. At the time of writing the letter, I had reasonable suspicion that dishonest individuals would know there would be few (if any) counter-fraud checks made on companies applying for a BBLS loan. Those with insider knowledge at approved lending institutions would have known this better than anyone. I made a point of discussing this matter with colleagues in the counter-fraud profession and speaking at various online events and learnt that others shared my concerns.
32. The UK public and government have an expectation that all crime will be recorded ethically. This is demonstrated by the NCRS document entitled, 'The National Crime Recording Standard (NCRS): What you need to know' published by the UK Government and available online. The guide explains that the purpose of the Standards is to ensure all crime is recorded consistently by the Police to help detect and prevent crime by capturing all information in one place. It adds, that *'recording accurate information about crime provides the police and their partners with data, which informs the targeted use of resources and allows the effectiveness of crime reduction strategies to be established'*.
33. Relevant to this Appeal to publish information, is the section that states the following: *'Recording and publishing crime data also helps the UK public in making informed decisions about the risk of crime to themselves as individuals and to allow judgements on how effective Government, police and partners are in tackling crime Government (both centrally and locally) to establish whether their policies are effective in driving down crime and to assess relative performance of the police and associated partners'*.
34. Therefore, the approach of not publishing information held by the British Business Bank (BBB) runs contrary to the long-established principle in the UK of being transparent with the public about levels of crime. This is because publication of the information, like publication of crime information by the police would allow the public to see:
- a. How effective Government, the lenders and BBB were in preventing and detecting fraud against the BBLS.
 - b. Establish whether government and bank policies were effective.
 - c. The risk of crime to themselves and their companies for example, whether a BBLS loan was taken out fraudulently in their Company name and without their knowledge.

35. It is in the public interest to record crime ethically and make it available to the public. When crimes are not recorded by the police, this results in public concern and remedial action by Her Majesty's Inspectorate. This was the case in 2020, when it was discovered that Greater Manchester Police (GMP) failed to record 80,000 crimes in a year.
36. It is reasonable to expect that the BBB should do the right thing and be transparent and publish the information which it knows would be useful to prevent and detect crime, especially with the help of an insider because they present a high threat to the public and businesses. I strongly encourage the BBB to report all crimes that they are already aware of to the City of London Police NFIB. That organisation has a tried and tested process for recording and allocating cases to relevant forces for investigation. The BBB could identify fraud in the BBLs data by either
- a. Commissioning a trusted public body such as the NFIB or NCA to ingest the BBLs fraud information into their powerful databases or
 - b. By publishing the information subject of this Appeal so that an organisation with the expertise can conduct the analysis.
37. It is vital that information that can identify fraudsters and companies used for fraud is reported to the police and not withheld. This is because fraud is now the most prevalent crime in the UK, and is responsible for devastating lives and destroying honest companies. In 2006, the UK Government's Attorney General-Led Fraud Review, the most in-depth look at fraud in the UK, acknowledged that fraudsters escape justice when suspicion of their crimes goes unreported, and when data is not shared and analysed. In July 2010, I published a 24 page official document titled a 'General guide to the NFIB: Information for Data Providers and the Public'. This is available online.
38. Section 1 on page 6 the NFIB guide states, *'Historically, many frauds go unreported to the proper law enforcement agencies. This, in turn, has reduced the quantity/quality of available information, which is vital to an effective, legal remedy to such offending. This situation allows fraudsters to operate 'underneath the radar', permitting them to commit and perfect further frauds that can damage thousands of people's lives'.*

Paragraph 3 adds, *'The National Fraud Intelligence Bureau (NFIB) was created to help the police and their partners catch and disrupt these criminals and make the UK a more fraud-resistant society, by alerting*

our communities to threats from fraud and working together to prevent crime occurring. The NFIB achieves this by harvesting large volumes of information on fraud that is known to have occurred but which, in most cases, is not reported to, or made routinely accessible to, the police'.

39. The BBB will in effect allow fraudsters to operate *'underneath the radar'* if the information about companies that received BBLs is not published. That in my opinion is completely unacceptable. It sends a very clear message to fraudsters that they will not be held accountable for crimes they decided to commit when an unprecedented level of public money was made available to save honest businesses from ruin.
40. Today, the estimated £5 billion lost to BBLs fraud, if protected could have helped support hard working families and honest businesses hurt by the current cost-of-living crisis. This was a view presented by Lord Agnew in an article published on 18 July 2022 in the Daily Mail entitled, *'Rishi is accused of peddling a 'fairytale' over his Covid loans scheme by one of his former ministers'*.
41. Between 2006 and 2009, I was a member of the Fraud Review and became the senior police officer responsible for designing and establishing the NFIB. My role included working closely with stakeholders in the Home Office, Chief Constables and Crime Registrars in police forces, financial services sector, and others to create new crime recording standards that apply to reports of fraud.
42. There was no official agreement from banks to report insider fraudsters to the NFIB, although I recall this happening on two occasions. There was not and remains no statutory duty on financial institutions or any other businesses to report Insider Fraud to the NFIB, law enforcement agencies or regulators. In my opinion, there is little incentive for financial institutions to report insider fraud to the police since it could result in negative consequences, such as reputational damage to the institution, or by prompting a regulatory investigation into the institution for not preventing and detecting the fraud sooner.
43. An investigation published by on 13 November 2016, suggested that insider bank fraud in the UK was huge, that 50 cases are reported to police every year, and that many more are kept secret. The article was published by The Sunday Times and is available online under the title, *'Huge scale of insider bank fraud revealed'*.
44. A fundamental weakness exists in the banking sector that hinders the prevention and detection of fraud and money laundering. On 28 August 2020, I wrote to Lord Agnew and other Ministers on behalf the FAP to alert them to this matter in the context of preventing fraud against the Covid-19 loan schemes and the use of taxpayer money. I also proposed the following solution: *'Creating a centralised data repository*

whereby all lenders share data on COVID-19 related loans and grants with a trusted central depository (such as a nominated bank or payments processor).'

45. My letter explained that, *'Centralising data collection creates a repository of material that can be analysed to identify trends, weaknesses and improvements in the system. This would also result in efficiencies for government and individual banks by reducing the administrative burden involved in collecting the same data from multiple lenders'*. A copy of the letter to Lord Agnew was published on the FAP website.
46. To the best of my knowledge, this weakness was not addressed and on 22 February 2021, I again wrote to the Chancellor of the Exchequer Rishi Sunak MP alerting him to the weakness in the banking system and again calling on him to publish names of companies receiving taxpayer-backed loans. I added that, *'These measures would greatly assist enforcement against those who defraud the system and help recover money that can be used to support honest businesses in need'*. This letter was also published on the FAP website. To my knowledge, there has been no acknowledgement of the system weakness by Ministers or the BBB. Thus, it appears the matter is not being addressed.
47. Seventeen months on and given the growing cost-of-living crisis, I believe the vast majority of the UK public will share my opinion that the UK government and the BBB must do all they can to help recover taxpayer-backed money obtained fraudulently by companies, some with inside knowledge. That can be done by publishing the information subject of this Appeal.
48. The letters sent to Ministers are relevant in so far as they highlight a deficiency in the ability of lenders to share and match data to prevent fraud and money laundering. This in turn makes it unlikely that they can share and analyse the information to identify insider fraud. Consequently, the option to match and analyse BBLS data independently of the lenders is a necessary and proportionate response.
49. I have considered the matter of whether it is likely that publication of the information and subsequent analysis of data would reveal fraudsters with insider knowledge and whether the risk of identifying this group of individual offenders is proportionate. I conclude that the answer is yes based on the following. In previous high-profile fraud cases, individuals in a position of trust have engaged in organised fraud. This threat is also evidenced by the National Crime Agency in the UK Strategic Threat Assessment.
50. Despite this, remarkably few insiders are ever reported to the authorities and prosecuted for their crimes. Examples of insider fraud include the £245m loans fraud involving senior HBOS managers and external advisors (that were brought to justice). These and other scandals can be found in the FAP Special Report

entitled *'Businesses Behaving Badly' – Fraud, corporate culture and ethics'*, published in July 2017. This document was published and free to download on the FAP website.

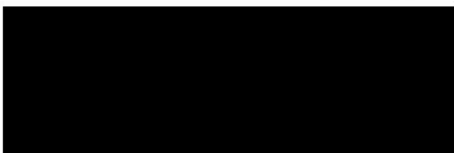
51. The most startling case of insider fraud on an industrial scale was the selling of Residential Mortgage-Backed Securities, known as derivatives. These contributed to the downfall of Lehman Brothers and the near collapse of the global financial system in 2008. That scandal was helped by insiders and loan intermediaries accepting false documents about incomes and identities to justify the granting of millions of mortgages to people who could not afford to repay the loans. These loans were quickly packaged-up by the lenders and sold to investors as derivatives before the borrowers defaulted on their loans.
52. Those insiders involved in this gigantic fraud appeared to know they would not be held accountable or prosecuted for their actions. This is likely because they knew neither the financial institutions nor the authorities would pursue them. Commentators have also argued that the institutions where the insiders worked were simply too big to prosecute or too big to fail. This proved to be correct as highlighted by the FT which found that despite enormous fines against banks, just 47 bankers were jailed for their part in the 2008 scandal. Moreover, half of those prosecuted were from one country, Iceland. This article was published on the FT website on 20 September 2018 under the title, *'Who went to jail for their role in the financial crisis?'*
53. The culture of insider fraud and non-existent due diligence by lenders granting loans prior to the 2008 crisis is explained well by the author Michael Lewis in his best-selling book, *'The Big Short: Inside the Doomsday Machine'*, and dramatized in the 2015 movie, *'The Big Short'*. As a result, I conclude, that it is in the public interest and proportionate to publish the information subject to this Appeal so that it can be analysed, and where appropriate, potential fraudulent activities can be properly scrutinised and investigated.
54. I have considered what risks may exist to the safety of companies that may be identified as being either suspected victims or perpetrators of fraud because of the information being published and analysed. For example, the risk that company loses a customer because the information reveals it took one or more loans. I conclude this risk to be low and unlikely. This is based on the following factors: (1) Companies and directors such as of the Pap John Pizza chain and others have been named publicly in relation to possible COVID related fraud and to the best of my knowledge continue to operate. (2) The volume and complexity of the task involved to match and analyse the information requires technical and analytical expertise that is available to professional data matching agencies that comply with the Data Protection Act.

55. I have considered the matter of whether the identification of companies that received BBLs is necessary and in the public interest. I believe it is since the company incorporation system in the UK is built on a shared bond of trust. Companies and their Directors benefit from the protection of limited liability. In return, Directors agree to publish information such as the ownership of the company, shareholders, accounts and any charges and securities.
56. This bond has been forged over centuries to build trust, so the public know who owns a company they may want to trade with or buy shares in. When Directors receive a loan from a lender, it is understood that a charge will be placed on the company and published. The banks issuing BBLs loans did not place a charge on the company as they were not required to do so. It is reasonable for a company to expect that details of a loan backed by the taxpayer should be public knowledge in the same way as a loan backed by a bank.
57. Lastly, I have considered the economic and reputational risks to the lending institutions if the information published reveals high levels of insider fraud at one or more institution. It is challenging to assess this risk without seeing the information subject of this Appeal. There will undoubtedly be serious questions to answer if any lender has a disproportionately high level of BBLs fraud committed by insiders. That could lead to an exodus of customers as experienced when Northern Rock collapsed in February 2008 and had to be nationalised. That in itself is also a matter of public interest.
58. The fact that a particular lending institution has a disproportionately high level of fraud will be a serious concern for the public and customers. However, a run on a bank due to high levels of BBLs fraud seems unlikely considering the scale of lending and taxpayer guarantees. I conclude that on balance, it is in the public interest to know how much fraud has been suffered and by which lenders.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



Print name:

DAVID
MICHAEL
CLARKE

Date:

21/7/2022

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