

Why is it important for banks to be regulated?

[Literature](#), [Russian Literature](#)



Introduction

It will be determined in this study whether the limits of a bankers business can ever be laid down by the law or whether a bankers business should in fact be left undefined. This will be done in light of the recent financial crisis so that a determination can be made as to whether banking law has proven effective in regulating bankers or whether unnecessary risk are still being taken. In doing so, the powers and responsibilities of the Financial Services Authority (FSA) will be examined in order to decide whether the activities currently being undertaken by the FSA are sufficient enough to regulate the financial market.

Literature Review

The main objectives of a bank is to provide financial services to individuals and organisations by allowing money to be either borrowed or deposited whilst at the same time acting as a means for credit to be created. Nevertheless, given the complexity of the modern banking business, it seems as though a lack of regulation exists which is especially evident in light of the recent financial crisis. This is because; banks appear to have taken extortionate risks without any intervention which is highly detrimental to both the economy and consumers. It is quite difficult to determine what a bankers business should consist of, however, which is why great difficulty remains when trying to assess how they ought to be regulated. And, although some attempt to define a bankers business has been made by the courts; *Commissioners of the State Savings Bank of Victoria v Permwan &*

Anor (1914) 19 CLR 45 and United Dominions Trust Ltd v Kirkwood [1966] 1 QB 783a bankers business still remains ill-defined.

It is unclear whether a bankers business should be laid down by the law, however, since the activities undertaken by banks are often too wide-ranging to classify. This would impose too much restriction on banks and certain activities would be prevented from being undertaken; Woods v Martins Bank (1959) 1 QB 55. Despite this, it is important that some form of restriction is in place so that unnecessary risks are avoided. This was highlighted by Benston and Kaufman (1996, p. 1) when they pointed out that; “ to protect our money, banks should not be allowed to take great risks that might cause them to fail.” Therefore, some restrictions are needed so that banks are not free to do as they wish as this would be extremely damaging to the economy. The Financial Services Authority (FSA) was in fact introduced in order to regulate the activities of bankers, yet it remains arguable whether this has been successfully achieved. This is because, although the FSA has been provided with statutory powers under the Financial Services and Markets Act (FSMA) 2000 to regulate the financial services industry more effectively, given the recent financial crisis, it is questionable just how efficient the FSA is.

However, as noted by the FSA themselves; “ as a risk-based regulator, our approach is based on a clear statement of the realistic aims and limits of regulation.” Not all agree with this, however, and instead it has been argued that the FSA are no longer relevant in today’s society (House of Commons Treasury Committee, 2009, p. 4). In view of this, it has thus been noted by

Awrey that; “ perhaps most glaringly, conventional financial theory failed to adequately account for the complexity of modern financial markets and the nature and pace of financial innovation.” This signifies how the FSA have been unable to keep up-to-date with the advances that are continuously being made within society and that further regulatory procedures are thereby required if the banking industry is to be restored to an acceptable state. Modern financial markets thereby appear to complex for the FSA and so it is important that more stringent regulatory practices are instilled upon the banking industry so that banks do not abuse their powers and responsibilities.

Proposed Methodology

In acquiring the relevant information for this study, various academic opinion, case law and legal theory will be analysed. These will be acquired by accessing text books, journal articles, governmental reports and online legal databases. Secondary research will be the main form of research used for this assignment so that existing data can be collected and analysed in order to reach a conclusion. This will be a more cost effective and time saving way of undertaking the research, which is applicable for this assignment given the difficulty in obtaining primary research from large organisations such as the FSA. Quantitative and qualitative research methods will be used so that information can be gathered that is in numerical form, whilst also gathering information that is not in numerical form but which contains descriptive data.

Outline of the Work

Overview of the Banking Industry

A brief overview of the banking industry will be provided here in order to determine the main objectives of bankers and the effects in which their activities can have on the economy.

Powers and Responsibilities of Bankers

It will be considered here whether a bankers business can be defined by the law or whether the activities are too complex to be defined.

Regulation of the Banking Industry

An evaluation as to whether the banking industry ought to be regulated more efficiently will be made by looking at the existing regulatory procedures and considering whether they have so far been effective or whether more needs to be done in order to prevent further financial crisis' from arising.

Financial Services Authority's Powers and Responsibilities

The powers and responsibilities of the FSA will be considered in order to determine whether additional powers ought to be conferred upon the FSA or whether modern banking is too complex to enable the FSA to regulate financial activities. Thus, it will be shown that whilst banking activities do remain complex, the FSA should still be provided with the ability to regulate the banking industry so that a robust system is in place. If the activities of bankers were not was in needed so that any problems that are likely (FSA, 2009, p. 5). Hence, it is vital that the risks taken by bankers are severely limited since much ambiguity would ensue if restraints were not being imposed upon the financial sector and as noted by Johnston (1960, p. 347; “

the difficulty is increased by the fact that banking, like other forms of business, continues to develop and expand its activities to meet its competitors and provide wider services for the public with the result that any attempt to squeeze the concept into the confines of a definition may prove successful today but inadequate tomorrow.”

Are the Powers and Responsibilities of the FSA acceptable in today’s society

Here, it will be discussed whether the powers and responsibilities of the FSA are acceptable in today’s society where modern banking is more complex than ever. Hence, it will be shown that the FSA has come under much scrutiny since the financial crisis was first instigated, yet rather than taking a step back, the FSA need to take a more interventionist approach so that future financial crisis’ can be prevented. It has thereby been said that the FSA should investigate “ how financial services firms manage their Information Security Risks; how these risks are evolving; the risks they pose to our objectives; and the role industry and government bodies play in assisting regulated firms to address these Information Security Risks” (FSA, 2004, P. 3). If a more interventionist approach is undertaken by the FSA, financial crimes similar to those that caused the economic crisis will be more easily identified and therefore dealt with appropriately. Strong financial crime deterrent messages[1] will also be sent out by the FSA and financial crime will inevitably be reduced.

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