

LAW

OCTOBER 31 2018, 12:01AM, THE TIMES

# Tribunals to protect small businesses from banks cannot come soon enough

SIMON DAVENPORT AND JEFFREY GOLDEN

Proposals set out by the Treasury committee will improve access to justice and boost growth



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**A** Treasury committee report published on Friday came after an important review into small and medium-sized business finance. In particular it looked into the much-criticised treatment of smaller enterprises in financial distress by Royal Bank of Scotland's global restructuring group.

One of its key recommendations is that the Treasury should bring forward proposals to create a financial services tribunal capable of handling similar matters in future.

This development should pique interest for two reasons. First, it is good to see that in the run-up to Brexit the English legal and



financial sectors are providing a new offering that would be difficult to match credibly in any other jurisdiction, rather than simply adopting a defensive posture.

Second, and closer to home for this chambers, the idea was proposed by Richard Samuel, a senior-junior at the set, who gave evidence to the committee amplifying ideas that he had developed in a series of articles. Many of these ideas had already attracted substantial support among smaller businesses and have now been embraced by the report.

Richard Samuel's proposal was based on his experience as an advocate in employment tribunals, which are a quick, inexpensive way of empowering employees to bring claims.

They ensure that employers respect the rule of law in labour markets and he suggested that small businesses should be given a similar forum to bring claims against banks. The claims that they could afford to bring there but cannot afford to bring to the courts will ensure that financial firms respect the law and regulation that governs them.

Most attractively for the politicians, it is suggested that a financial services tribunal should help solve the intractable cultural problem in some parts of the industry. This could happen in the same way that employment tribunals moved employment culture from "master and servant" (which is how the common law courts described the relationship) to the world of fairness, non-discrimination and equal rights.

Our chambers colleague also argues that a financial services tribunal will help the area of business in two significant ways. It will rebuild consumer confidence, damaged by scandals that have dominated headlines since 2008, by reassuring small businesses they have access to justice if something goes wrong.

And, unlike the Financial Ombudsman Service, the tribunal’s public, reasoned decisions will build a body of case law that should clarify the meaning of regulations that the industry needs to apply every day.

Both these effects will stimulate growth, reduce costs and increase profits for the industry.

We agree with the committee that a tribunal would boost all sectors of UK plc and that “the government must not be hesitant when it comes to bringing forward the appropriate legislation” even when so much time is being devoted to Brexit.

**Simon Davenport, QC, and Jeffrey Golden are joint head of chambers at 3 Hare Court in the Temple**

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