

## The plot thickens: ousted ASIC Chair James Shipton got in the way of London's banks

The post-Brexit free trade deal between the United Kingdom and the European Union did not include the UK's £9.9 trillion financial services industry, Britain's largest service export product (£60 billion in 2019). Previously, UK banks could easily operate in the EU using "passporting rights", but a new equivalence regime has not been negotiated. The EU's temporary regime runs out in June 2022, with significant ramifications for the UK's financial sector. For example, the EU and UK are wrestling for control over the €46 trillion euro-denominated derivatives clearing market (more than triple the size of the EU's economy). Currently, 90 per cent of this market is controlled by London's Clearing House (LCH), but after June 2022 this could move to Europe.

Post-Brexit, the "battle over financial services has barely got going", reported *Bloomberg* on 5 July 2021, suggesting in the meantime to "follow the money as to how the big banks and their clients shift their businesses".

"Following the money" explains the UK's renewed focus on Australia as a post-Brexit stepping-stone into new Asian markets. This was flagged in a submission to a 2017 Australian parliamentary committee on the future UK-Australia free trade deal, wherein British bank HSBC posited that "UK businesses can take advantage of Australia's familiar legal, business and social systems to establish offices from which they can tap into China and ASEAN [Association of Southeast Asian Nations] consumer markets ... [and can] access Asian growth indirectly by investing in Australian assets with a high degree of exposure to Asian trade". ([AAS, 10 Oct. 2018.](#))

Australia is expected to play a key role in the rebooted British Empire 2.0, or "Global Britain" program, which seeks to use the Five Eyes intelligence partnership networks to facilitate the UK's economic and military expansion into Asia, starting with CANZUK—Canada, Australia, New Zealand and the UK. CANZUK is an organ of the British "informal financial empire" (into which it transformed itself following decolonisation) run through the City of London, evident in the backgrounds of key CANZUK advisors and leaders, who hail from British banking giants, investment banks and the Bank of England. Contributors to CANZUK self-describe as "life-long Anglophiles" and believe that "CANZUK is the launching pad for a global Britain". CANZUK aspires to keep Australia firmly in the British Empire 2.0 camp, if the background of Nigel Greenwood, director of CANZUK International, is anything to go by. Greenwood is a former senior analyst in the Australian government, who in the 1990s "wrote a civil libertarian defence of the Crown in the Westminster system, arguing against the Australian republican initiative", and campaigned against an Australian republic in the 1999 referendum.

### ASIC Chair was a spanner in the works of 'Global Britain'



ASIC Chair James Shipton and his deputy Daniel Crennan ended the exemption on City of London firms operating in Australia without a licence. Photo: Screenshot

However, the plans to use Australia as a stepping stone for British financial expansionism hit an unforeseen snag, in the Chair of the Australian Securities and Investments Commission (ASIC), James Shipton. Shipton was appointed as head of ASIC on the eve of the Financial Services Royal Commission, where ASIC would be slammed for its failure to protect the public from predatory financiers. Shipton and his Deputy Chair, barrister Daniel Crennan, appeared to take the lessons of the Royal Commission to heart, and instituted a raft of measures intended to properly regulate financial services and prosecute misconduct.

One of these measures was ASIC's decision to repeal the existing "equivalence relief" regime which allowed UK Foreign Financial Services Providers (FFSP) to service Australian wholesale clients without having to apply for an Australian Financial Services Licence (AFSL); the UK's standards had been treated as equivalent to Australia's, but Shipton ended that, requiring UK firms to apply for Australian licences. ASIC's decision, which came into effect in March 2020, alarmed key architects of the UK financial system. This is evident in a June 2020 report authored by the City of London Corporation (a private municipal body representing London's financial district), in partnership with the UK Treasury and in consultation with key stakeholders—the UK's most powerful banks, payments providers, industry lobbyists and the UK's financial regulator, the Financial Conduct Authority (FCA).



## UK cross-border trade in services with Australia

An analysis of market access for financial services firms



The City of London report that explicitly targets Australia as an expansion opportunity for UK firms into Australia and Asia. Photo: Screenshot

market access for financial services firms", acknowledged that the Australian market "presents a gateway to the Asia Pacific" for UK-based firms, which could "leverage the existing agreements and mechanisms such as the Asia Region Funds Passport and the Trans-Tasman Agreement", to access a much broader range of clients. However, the report warns that "[u]p until recently UK-based firms were able to enter the Australian market with relative ease" through the equivalence regime, but ASIC's repeal meant "UK-based firms will find that entering or operating in Australia will pose greater difficulties".

The report documents the equivalence regime was due to expire in 2016-17, but a two-year extension was granted while ASIC undertook a policy review, which reportedly found non-compliance in FFSPs benefiting from the regime, and identified supervisory and enforcement concerns. ASIC also identified that the equivalence regime was not a two-way street. FFSPs enjoyed the benefit of compliance cost-cutting in Australia, while Australian financial service providers did not receive a comparative benefit in overseas markets, putting Australian companies at a competitive disadvantage. ASIC's proposed changes would bring Australia into line with other countries in the Asia Pacific.

ASIC's review cited changes in international regulation which made the current equivalence regime inappropriate, and stressed the importance of regulators being able to use supervisory and enforcement tools to address the risks in decentralised wholesale markets. A consultation for the repeal process began in June 2018, shortly after Shipton's appointment. The equivalence relief was extended to March 2020 to give foreign firms time to apply for a Foreign Financial Services Licence (FFSL), which would subject overseas firms to increased reporting obligations such as compliance reporting, breach disclosure, and having adequate risk-management systems in place.

In an outcome which would have alarmed predatory UK banks and the City of London, which crusading anti-Mafia Italian journalist Roberto Saviano calls "the most corrupt place on earth", the report acknowledged ASIC's changes meant FFSL holders and FFSPs would now be subject to regulatory surveillance oversight from ASIC. Foreign banks faced the new enforcement powers ASIC had received in the wake of the Royal Commission, which ASIC Deputy Chair Daniel Crennan declared enabled ASIC to pursue "extremely long custodial sentences" and "high, crippling civil penalties".

### **Government backflips on equivalence regime in 'surprise' reversal**

On 12 May 2021, the Australian branch of Allens, an international commercial law firm operating in the Asia Pacific, reported that industry bodies had lobbied against ASIC's changes to the FFSP regime before the 6 October 2020 Federal Budget announcement. Lobbyists claimed that the changes would hinder financial services trade, stressing the need for Australia to "maintain a competitive tax and regulatory environment", according to Allens, with one submission citing the City of London's report.

On 23 October 2020, Shipton and Crennan were ousted from ASIC over a contrived expenses scandal, despite being later cleared of any wrongdoing. The Citizens Party has documented the key role played by Treasurer Josh Frydenberg in the scandal, which enabled him to install a "business-friendly" head of ASIC, former Deutsche Bank lawyer Joe Longo, who swiftly signalled the end of ASIC's pro-litigation stance under Shipton. ([AAS, 23 June 2021](#).)

With Shipton out of the way, the government swiftly reversed ASIC's changes to the equivalence regime. In a 12 May 2021 article titled "Surprising 2021-22 Budget backflip leaves the new Foreign Financial Services Provider regime in limbo", Allens observed that although there were "grumbings" from the industry over ASIC's repeal of the equivalence regime, the Australian government's sudden

reversal of ASIC's changes came as a surprise. In the 11 May 2021 Federal Budget announcement, the government restored the regulatory equivalence relief for FFSPs, undoing ASIC's repeal. The government also initiated a consultation on permanently restoring the equivalence regime, and actually expanding it by exploring options to establish a fast-track licencing process for FFSPs to operate in Australia. Under its new Chair Joe Longo, ASIC has extended the equivalence relief until March 2023, pending the outcome of Treasury's 9 July 2021 consultation. The government's backflip evidently surprised FFSPs which had already invested in making changes to comply with ASIC's new regime (albeit dragging their feet), and Allens observed they "would be well within their rights to ask why the Government didn't make this announcement sooner".

## City of London's wishlist for UK banks



Australia's Assistant Treasurer for Financial Services, Senator Jane Hume (the "Senator for bankers", top), participated in the City of London event that launched the City of London report. Photo: Screenshot

As evidence of the power behind the City of London's report, to mark its launch the Australian British Chamber of Commerce hosted a 20 July 2020 webinar which featured high-profile individuals such as the Lord Mayor of the City of London; the Economic Secretary to the UK Treasury; the British High Commissioner to Australia and her counterpart, the Australian High Commissioner to the UK; and Australian Senator Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology.

The City of London's report included a wishlist for the UK government to pursue as part of the ongoing UK-Australia free trade deal negotiations. This included the removal of a tax UK banks pay on the interest they generate when lending capital to Australian banks. The report recommended the removal of a series of barriers which limit the services UK banks and financial services firms could offer Australian retail customers, suggesting these be replaced with wide-ranging equivalence provisions. The report praised Australia as a "unique opportunity for UK based firms" as "one of the largest asset management markets in the world", with growth underpinned by compulsory superannuation. It recommended that barriers for UK asset managers be removed as part of the UK-Australia free trade agreement, including lifting the monetary threshold for Foreign Investment Review Board approvals; and allowing foreign funds to market to Australian retail investors, suggesting a review of "tax efficiencies" to amend or reduce taxes for a possible "passporting" scheme between the UK and Australia.

It is evident that predatory UK banks are pivoting from Europe, aiming to leech from the Australian public and the region. The City of London's report revealed UK banks callously saw the Australian Financial Services Royal Commission report, which revealed the terrible suffering of Australian citizens inflicted by Australia's criminal banking cartel, as "an opening to expand into Australia". Because the Royal Commission resulted in the tightening of regulation of Australia's Big Four banks, this reportedly "opened them up to competition from foreign firms", according to the City of London report, which cited the attraction of the "high margins" in the Australian banking market. Revealingly, the report states that in "the immediate aftermath" of the Big Four banking scandals exposed in the Royal Commission, predatory foreign banks were swift to move in, "seeking to establish a stronger foothold in the Australian market", specifically naming HSBC (UK), Citi (USA) and ING Bank (Netherlands).



Roberto Saviano @robertosaviano · May 26, 2016

House of Commons. Back entrance. In a while I'll talk about London, world's capital for money laundering.



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Crusading Italian anti-mafia journalist Robert Saviano, author of Gomorrah (now a Netflix series), tweeted this when he testified before the UK House of Commons in 2016. When James Shipton blocked City of London firms from operating in Australia without a licence, he was upsetting powerful interests.

The City of London report recommends a reduction in “regulatory fragmentation” between Australian and UK markets. One example given is regulations around anti-money laundering, suggesting “[g]reater coherence in the regulation between jurisdictions will be of mutual benefit”. This is evidently referring to the “mutual benefit” of the corrupt banks, not the public. Roberto Saviano, cited above, testified to a UK House of Commons committee in May 2016 that “the City of London, together with Wall Street, is the world’s biggest ‘laundrette’ of drug trafficking’s dirty money.” England’s financial regulator, the Financial Conduct Authority (FCA), has come under fire for the same regulatory capture and systemic negligence which was exposed in Australia’s Royal Commission.

The Treasury-instigated overthrow of James Shipton facilitated the reversal of positive regulatory progress made in the wake of the Royal Commission. The back-flip on ASIC’s equivalence regime repeal is the latest example. The City of London’s report had the full weight of the UK Treasury, City of London Corporation, and UK banking giants behind it. It reveals how threatening ASIC’s repeal was to the “informal financial empire” behind the UK’s plans for “Global Britain”, of which Australia is to be a key “gateway” to Asian markets. The Australian government is full of politicians eager to appease Britain’s expansionist plans. The timing of the City of London report raises questions, as it was published in June 2020, only a few months before Shipton’s ousting: had the Chair of ASIC become an obstacle to Britain’s Empire 2.0 financial expansionism?

*By Melissa Harrison, Australian Alert Service, 18 August 2021*

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