



STUDY OF THE CO-OPERATIVE BANK'S CLOSURE OF ACCOUNTS OF NOT-FOR- PROFIT ORGANISATIONS

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Glossary of Abbreviations

AIUK	Amnesty International UK
AML	Anti-Money Laundering
CAF	Charities Aid Foundation
CFG	Charity Finance Group
CSC	Cuba Solidarity Campaign
CTF	Counter-Terrorist Financing
DPA	Deferred Prosecution Agreement
FATF	The Financial Action Task Force
FCA	The Financial Conduct Authority
MERs	Mutual Evaluation Reports
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
NRA	National Risk Assessment
NSC	Nicaragua Solidarity Campaign
OFAC	Office of Foreign Assets Control (of the US Treasury)
PSC	Palestine Solidarity Campaign
RBA	Risk-Based Approach
ToR	Terms of Reference
SME	Small and Medium-sized Enterprise
TPIMs	Terrorism Prevention and Investigation Measures
V&EC	Values & Ethics Committee

Executive Summary

Over the past two years, a number of not-for-profit organisations (NPOs) have had their accounts closed by the Co-operative Bank (the Bank or the Co-op). The affected parties are predominately small civil society campaign groups, pursuing human rights and development agendas, which rely primarily on individual donations for their core funding. As a consequence, they have had to contend with severe operational costs, loss of income and reputational damage.¹

This study has been brought about in response to Amnesty International UK's (AIUK) AGM 2016, which overwhelmingly voted in favour of a resolution for AIUK to take action to challenge the Bank's decisions.² The Co-operative Bank and Amnesty International UK have been in partnership for over 15 years, raising several million pounds to support Amnesty's work on defending and promoting human rights. The purpose of this study is to examine the circumstances under which a number of account holders, particularly NPOs, that banked with the Co-operative Bank were threatened with account closure or had their accounts closed, for allegedly failing to meet its due diligence and regulatory requirements.³

This study considers the action of the Co-operative Bank against the evolving regulatory and enforcement background that has contributed to the account restriction and closure decisions taken by many banks, including the Co-op. The global anti-money laundering and counter-terror finance architecture led by the Financial Action Task Force (FATF) and the position banks have had imposed on them as the 'frontline' in the fight against financial crime has fed a general trend for banks to 'de-risk', either closing the accounts of clients considered to be high risk, or frustrating their financial activity by delaying or blocking payments involving higher risk jurisdictions. The NPO sector has found itself particularly affected by the tightening of bank risk management standards and their resulting reduction of risk appetite.

Coupled with this broad legislative and regulatory background, the specific issues experienced by the Co-op in its recent history, most notably the crisis between 2009-2013, are also important to address as they have undoubtedly contributed substantially to the Bank's diminished risk appetite.⁴

¹ Interview conducted by the authors.

² Amnesty International UK, 'National Conference and AGM 2016', *Resolution B2 – Closure of Human Rights NGO Accounts by the Co-op Bank*, p.13 https://www.amnesty.org.uk/webfm_send/2124

³ Hazel Sheffield, *The Independent*, 'Co-op Bank closes more accounts belonging to charitable organisations,' 31 May 2016, [online] Available at: <http://www.independent.co.uk/news/business/news/co-op-bank-closes-more-accounts-belonging-to-charitable-organisations-a7046996.html> [Accessed 2 Nov. 2016].

⁴ Financial Conduct Authority, *Final Notice to the Co-operative Bank plc*, 10 August 2015, [online] Available at: <https://www.fca.org.uk/publication/final-notices/the-co-operative-bank-plc-2015.pdf> [Accessed 10 Nov, 2016].

Fundamental to this study is an examination of the Co-op's Ethical Policy, a policy that champions treating customers fairly, acting with honesty and transparency, and promoting human rights and equality. The Bank seeks to justify its actions in the context of its Ethical Policy, asserting that it is inherently unethical for it to fail to comply with its legal and regulatory obligations thus putting its sustainability or licence to operate at risk. Others suggest that treating charities in this way is 'ludicrous' and puts risk appetite above the Bank's founding principles of co-operation and community cohesion.⁵

In recent years, the Co-op experienced considerable and primarily self-inflicted trauma which revealed serious shortfalls of capital, management and governance, including a lack of financial crime compliance which could charitably be described as 'naïve'.⁶ This led the Bank to take some significant restructuring measures including 'catching up' with what had become accepted and expected financial crime compliance requirements in the UK banking sector. The distribution of enhanced due diligence forms to a large number of customers, including those featured in this study, is evidence that the Bank had very little idea of who its customers were and what business they did.

The inevitable occurred; a knee-jerk reaction to catch up and close the gulf with peer banks in the UK, with the resulting negative consequences for at least 400 accountholders. The facts of, and background to the case are clear. The questions this study seeks to answer are whether the Co-op acted consistently with its Ethical Policy; how well this was integrated into its approach to addressing its perceived financial crime risk management shortfall; and whether it has implemented lessons from these actions.

In answering the first two questions, this study assesses that the Co-op faced, and will continue to face, a severe decision-making conflict as evidenced by the Terms of Reference of its newly established Values and Ethics Committee. On the one hand, the Bank should treat customers in a manner consistent with its values and ethical policies, including promoting human rights and treating customers fairly; on the other hand, the Bank is required to consider its legal and regulatory requirements that are (unlike its business positioning) common to all banks in the UK. Some may argue that the Co-op's Ethical Policy should set its decision-making in this field apart from other banks. However, whilst certain areas of banking allow for differing standards as evidenced by Co-op's ethical lending policy, financial crime compliance is not one of them. Thus the Bank put its risk

⁵ Civil Society, 'Bubb intervenes after Co-operative Bank closes charity bank accounts', 27 November 2015, [online] Available at: <https://www.civilsociety.co.uk/finance/bubb-intervenes-after-co-operative-bank-closes-charity-bank-accounts.html> [Accessed 9 Nov. 2016].

⁶ Interview conducted by the authors.

appetite above its founding principles of co-operation and community cohesion. In the state the Bank found itself, in the context of the regulatory backdrop it faced, this prioritisation was somewhat inevitable, though not an excuse for a poorly executed and communicated approach with an unclear rationale for targeting the small NPOs that are the subject of this study.

Which bring us to the most important and pertinent question, what has Co-op learnt from this experience? What is clear from interviews conducted for this study is that the Bank's communication in conjunction with its account closure process was at best incompetent, with mixed and conflicting messages being sent (if communication was forthcoming at all), and at worst hostile, with the release of an unnecessarily provocative press statement. This failure of communication suggests a lack of prioritisation within the Bank of the customer account management process. This is something which the establishment of a new 'Exit Forum' seeks to address. The commitment that the Bank suggests it is making through the Exit Forum to ensuring that all issues are considered and alternatives proposed to accountholders before an account is closed is welcome and, in the experience of the authors, unique amongst High Street banks. If these and other measures that the Bank has stated it is committed to are to have credence, the Bank must ensure that they are transparent, properly monitored, independently validated and subject to external reporting.

Whilst remedial action is welcome, it is primarily the purpose of this study to judge the extent to which the Co-op's account closure action failed to meet its self-defined Ethical Policy. Measured against these standards, the Bank's actions clearly failed. As assessed in this study, the Co-op failed to act with honesty and transparency in its dealings with affected customers and cannot begin to claim that it treated customers fairly to minimise harmful consequences for them. Even if closures were warranted, the way they were handled was incompetent, communication was (at best) poor and haphazard, and nothing appears to have been done to assist customers whose accounts were closed to minimise the resulting disruption, for example by redirecting standing orders.

Furthermore, many of the accounts that were closed related to organisations that seek to promote human rights and equality, contradicting the Bank's assertion that it promotes these issues.

In sum, a confluence of events in 2012-2013 led the Co-op to make account closure decisions which, had it had in place the risk management and process structures it claims it has today, may have turned out differently for many of those that lost their Co-op banking access as a result. It is now up to the Co-op to demonstrate that it has indeed learnt from this experience and that it is able to restore the confidence of those, such as Amnesty International, who support the Co-op for its ethical stance. This requires the Bank to integrate its ethical policies into its risk management processes, and to demonstrate that it is operating transparently and treating its customers fairly.

This report recommends that in order to give effect to the Bank's Ethical Policy, the following measures are taken with appropriate disclosure in the annual Values and Ethics Report:

- The Co-op acknowledges deficiencies in its de-risking approach with regards to integrating its ethical principles, and commits to ensuring that its customer account decision-making process is conducted according to a more coherent framework that is consistent with these principles;
- The Co-op monitors implementation of its ethical policy, adopts metrics for benchmarking performance, validates these independently, and reports publicly on progress;
- The Co-op publishes a clear explanation of its client bank account risk management process, including annual indicators of accounts reviewed and decisions taken with associated reasoning beyond the generic;
- The Co-op discloses details of the Exit Forum process with a commitment to exhaust all possibilities before considering account closure, including working with customers to help address risk appetite concerns;
- The Co-op clarifies its associated communications strategy and includes a commitment not to make public statements that might harm the clients in question;
- The Co-op provides a commitment to assist with account moves (including the redirection of standing orders) if accounts are closed.

Introduction

Over the past two years, a number of not-for-profit organisations (NPOs) have had their accounts closed by the Co-operative Bank (the Co-op or the Bank). Some suggest that in doing so, the Bank put its risk appetite above its founding principles of co-operation and community cohesion. Others believe that failure of the Bank's management to provide effective stewardship made it inevitable that it could not fulfil its ethical principles.

As it has stabilised its financial health following its capital crisis in 2013, the Bank has embarked on a range of remedial actions, taking measures to improve its ability to protect itself against the risks it faces across its business lines, including related to financial crime. The result of this activity has been a number of bank account closures. Were these closures warranted? Did the Bank relinquish its highly promoted and valued Ethical Policies in making these decisions?

The purpose of this study is, therefore, to examine the circumstances under which a number of account holders, particularly NPOs, that banked with the Co-operative Bank were threatened with account closure or had their accounts closed, for allegedly failing to meet its due diligence and regulatory requirements.⁷

This study has come about in response to Amnesty International UK's (Amnesty or AIUK) AGM 2016, which overwhelmingly voted in favour of a resolution for AIUK to take action to challenge the Bank's decisions.⁸ The Co-operative Bank and Amnesty International UK have been in partnership for over 15 years, raising several million pounds to support Amnesty's work on defending and promoting human rights. Amnesty is currently in two fundraising partnerships with the bank: the Amnesty Credit Card and the Current Account 'Everyday Rewards' Scheme.⁹

The affected parties (in particular those that chose to make their situation public) are predominately small civil society campaign groups, pursuing human rights and development agendas. They rely primarily on individual donations for their core funding and include twinned and affiliated groups of the Palestine Solidarity Campaign (PSC), the Cuba Solidarity Campaign (CSC) and the Nicaragua Solidarity Campaign (NSC). As a result of the threat or actual closure of their accounts, they have had to contend with considerable operational costs, loss of income and reputational damage.¹⁰

⁷ Hazel Sheffield, *The Independent*, 'Co-op Bank closes more accounts belonging to charitable organisations,' 31 May 2016, [online] Available at: <http://www.independent.co.uk/news/business/news/co-op-bank-closes-more-accounts-belonging-to-charitable-organisations-a7046996.html> [Accessed 2 Nov. 2016].

⁸ Amnesty International UK, 'National Conference and AGM 2016', *Resolution B2 – Closure of Human Rights NGO Accounts by the Co-op Bank*, p.13 https://www.amnesty.org.uk/webfm_send/2124

⁹ Evidence given to authors by Amnesty International UK

¹⁰ Interview conducted by the authors.

As a bank whose business model is grounded in its Ethical Policy, the Co-op's actions have been challenged by those who assert that it has behaved inconsistently with the framework that it has spent years propagating. Indeed, a significant proportion of its customers are known to have joined the Bank because of the Co-op's ethics and values, which have traditionally placed human rights at the forefront of its mission. In light of these closures, the Bank stands accused of taking commercially-led decisions that seek to shed accounts that *may* present a greater risk, but ultimately bring them no profit. Indeed, the groups affected contend that they were not asked in any great detail about their work, with some never, or very rarely, transferring money abroad, precluding them from exposure to the risks that typically lead banks to make such 'de-risking' decisions.

The banking sector has come under increased pressure from governments and regulators in recent years, which has led to a range of business decisions with both intended and unintended consequences. Due to the globalised nature of finance, banks, perhaps more than any other industry, are exposed to geopolitical shifts and trends, and are obliged to comply with international requirements regardless of their desired business focus or strategy. Banks of all sizes face potentially debilitating fines or loss of operating licences¹¹ if they are found to have breached international and domestic anti-money laundering and counter-terror finance (AML/CTF) requirements. Compliance with these recommendations and regulations is not optional, although interpretation inevitably plays a significant role in decision-making. Consequently, 'bank de-risking' has led banks to prioritise areas of core-business, moving away from sectors deemed higher-risk such as the NPO sector. As a relatively small institution, and with approximately 40,000 charity accounts, the Co-op arguably faces a greater relative burden than most, judged through this lens. This combined with some well-publicised financial troubles and scandals that it has recently experienced, together with the Bank's belated focus on raising its deficient financial crime compliance standards, inevitably contributed to the Bank's reconsidered risk appetite. A regulatory fine comparable to those experienced by some of its counterparts could be devastating for its business, and perhaps its existence.

This study will assess the actions of the Co-op by taking all of these factors into account. It will analyse the regulatory requirements to which the Co-op is subject, both domestically and internationally, providing an account of bank de-risking as a whole, set against the backdrop of the Co-op's recent challenges; it will examine the procedures followed by the Bank including its

¹¹ See for example recent action by Singaporean authorities against Falcon Bank in connection with the 1MDB corruption scandal, citing a persistent and severe lack of understanding of anti-money laundering requirements and expectations. The full Monetary Authority of Singapore statement can be found here: <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2016/MAS-Directs-Falcon-Bank-to-Cease-Operations-in-Singapore.aspx>

correspondence with customers, particularly with regard to the goals at the heart of its Ethical Policy, assessing the full implications and consequences of account closures for affected organisations; it will further take a view on what an ethical approach to bank de-risking might look like and assess the changes that the Co-op has implemented since the account closures under consideration; and finally, it will formulate a set of conclusions that will form the basis of Amnesty International's advocacy work and future interactions with the Bank.

This study was conducted through a combination of desktop research via open source information, as well as interviews with key stakeholders including Amnesty International UK, the Co-operative Bank, the Save our Bank Campaign, and affected parties including the Nicaragua Solidarity Campaign, the Cuba Solidarity Campaign and the Palestine Solidarity Campaign, along with some of their affiliates.

The Regulatory Background

In considering the actions taken by any bank over the past five years, it is important to understand the evolving regulatory and enforcement background that is viewed to have contributed (rightly or wrongly) to the account restriction and closure decisions taken by banks, including the Co-op. This section of the study therefore firstly considers the global anti-money laundering and counter-terror finance architecture led by the Financial Action Task Force (FATF), which is the global standard setter in this area. It also examines the inexorable trend of bank 'de-risking' with its general and NPO-specific manifestations.

FATF was established in 1989 as the inter-governmental organisation responsible for promoting the effective implementation of legal, regulatory and operational measures for tackling firstly money laundering, then terrorist financing following 9/11 and, since 2012, the financing of nuclear proliferation.¹² Through its 40 Recommendations it has become the global standard setter for policies and regulations regarding threats to the integrity of the financial system. FATF conducts Mutual Evaluation Reports (MERs) of member countries' AML and CTF regimes, assessing the extent to which they are compliant with the regulations.¹³ The obligation for banks to act as the 'frontline' in the fight against financial crime, through monitoring, reporting and keeping a record of suspicious transactions are defined by these international standards, and have been broadly adopted by FATF's 37 members (including 35 states and two regional organisations).

¹² FATF, 2016, *What we do - Financial Action Task Force*, [online] Available at: <http://www.fatf-gafi.org/about/whatwedo/> [Accessed 10 Nov. 2016].

¹³ Centre for Financial Crime & Security Studies, 2016, *What is FATF? - Centre for Financial Crime & Security Studies*. [online] Available at: <http://cfcs.wpengine.com/analysis/what-is-fatf/> [Accessed 10 Nov. 2016].

De-risking as a Consequence

Bank de-risking refers to financial institutions either closing the accounts of clients considered to be 'high risk'¹⁴ or frustrating their financial activity by delaying or blocking payments involving higher risk jurisdictions, such as those in which NPOs often operate in humanitarian, peace-building or development roles. Our analysis suggests that this industry trend will certainly have contributed to the Co-op's decision-making, which is why an explanation of this phenomenon is pertinent.

De-risking must be understood against the backdrop of substantive changes in the banking and regulatory world following the global financial crisis of 2007/8. Faced with increased regulation and a tougher enforcement environment (driven predominately by the actions of US regulators), the overall risk appetite of banks has been steadily declining, as they have sought to focus their priorities on areas of core-business and away from clients that, in their view as they interpret government regulation and enforcement action, present a higher risk of money laundering or terrorist financing (ML/TF).

In recent years, numerous banks have received significant fines for failure to comply with banking regulations, particularly for lapses or abuses in the money laundering or sanctions fields. Headlines concerning banks such as HSBC, Standard Chartered and BNP Paribas have revealed major failings in procedures, for which they have been punished. For example, HSBC was fined a record US\$1.9 billion in 2012 for a range of anti-money laundering failures that led to the laundering of at least US\$881 million, including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia.¹⁵ Consequently, it entered a five-year deferred-prosecution agreement (DPA) with the US Justice Department, agreeing to submit to oversight from a monitor. Inevitably, events such as these have contributed to a climate in which banks tread far more carefully when it comes to operating with clients that they believe might expose them to potential money laundering and terrorist financing risks, arguably proceeding with undue caution in their interpretation of their compliance obligations.

Banks must base decisions on customer relationships by conducting a risk-based approach; namely, taking into consideration various factors relating to their customers' business including: geographical location of operations; type of organisation and the services it offers; and the extent to which an

¹⁴ Tracey Durner and Liat Shetret, 2016, *Understanding Bank De-risking and its Effects on Financial Inclusion: An Exploratory Study*, Global Center on Cooperative Security.

¹⁵ United States Department of Justice, 2012, *HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement*, [online] Available at: <https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations> [Accessed 10 Nov. 2016].

organisation's operations expose the bank to undue risk, which the bank considers that neither itself nor the organisation in question is able to manage or mitigate. As noted in a recent report for the UK's Financial Conduct Authority (FCA) concerning de-risking, a risk-based approach (RBA) to AML/CTF is not new, having been a pillar of the AML/CTF framework for over a decade as dictated by the EU 3rd Money Laundering Directive and implemented in the UK through the Money Laundering Regulations 2007. Under these regulations, banks have been required to integrate RBA procedures, viewing their effective implementation as a way of keeping compliance costs under control.¹⁶

There is however a growing concern that the RBA contains no agreed quantitative measure for assessing risk factors and is left open to interpretation, meaning that some sectors, such as NPOs, are more adversely affected by de-risking than others. The FCA's de-risking report acknowledges that banks are ultimately trying to do what is expected of them, and that this regulatory focus on risk management will inevitably continue as countries implement the revised FATF standards and, in Europe, implement the forthcoming 4th Money Laundering Directive.¹⁷

Key to this consideration is the fact that the ability of banks to manage customer risk will vary between institutions, with, on the one hand, larger institutions having much greater resources to carry out due diligence than smaller ones, and on the other, smaller institutions offering specialisation (such as a commitment to ethical banking) that larger institutions do not.

The result of this complex mix of influences on risk assessment has in some cases led to a 'blanket approach' being taken to risk management, for example using lists of high-risk sectors or countries as a tool for determining which client relationships to restrict or close.¹⁸ This has contributed to entirely legitimate organisations experiencing banking restrictions or closures, imposed simply for having an association with a high-risk jurisdiction or sector, or in some cases for merely being perceived as having such an association.

This reduction of risk appetite, combined with the view of banks as the 'frontline' in tackling illicit financial flows, particularly as they relate to money laundering and terrorist financing, has led to adverse effects for various sectors and geographies that appear to be getting only worse. Users of

¹⁶ John Howell & Co. Ltd., 2016, *Drivers & Impacts of Derisking: A study of representative views and data in the UK* by John Howell & Co. Ltd. For the Financial Conduct Authority

¹⁷ The EU 4th Money Laundering Directive essentially gives effect to the revised FATF standards in an EU context. It has also become the vehicle by which the EU has attempted to raise counter-terror finance standards in light of the terrorist attacks that have occurred in Europe over the past 18-24 months

¹⁸ John Howell & Co. Ltd., 2016, *Drivers & Impacts of Derisking: A study of representative views and data in the UK* by John Howell & Co. Ltd. For the Financial Conduct Authority

the banking system who are viewed as ‘high risk’ have to contend with ever-more checks and delays in transaction execution, and in the worst-case scenarios have had bank accounts closed, losing access to the financial system altogether.¹⁹ The unintended consequences of this can be both substantial and counterproductive with regard to regulatory objectives. Paradoxically, whilst adherence to international standards is necessary to stop the flow of illicit funds, as US Secretary of the Treasury Jack Lew pointed out at a recent World Bank event, ‘if the [regulatory] burden is so high that people withdraw from the financial system or are excluded from it, the risks of illicit transactions rises’²⁰ as more money flows outside the formal financial system.

De-risking and the NPO Sector

As alluded to in the previous section, the NPO sector has found itself particularly affected by the tightening of bank risk management standards and the reduction of risk appetite amongst financial institutions. This next section will therefore explore the primary NPO-specific contributors to this phenomenon, and the countervailing human rights concerns arising from this.

Regulation and Risk Appetite

The NPO sector came under increased scrutiny following the 9/11 attacks on New York and Washington DC. In the aftermath of the attacks as George W Bush launched his ‘War on Terror’, one of his first steps was to sign Executive Order 13224, which aimed to launch a ‘strike on the financial foundation of the global terror network’ in order to ‘starve the terrorists of funding’.²¹ Following this, the UN Security Council passed Resolution 1373 which urged member states to criminalise, prevent and suppress, and freeze assets associated with terrorist financing.²² As outlined earlier, this action was led by the Financial Action Task Force (FATF), the global standard setter for AML/CTF which rapidly had counter-terror finance added to its existing anti-money laundering mandate. Publishing nine ‘Special Recommendations’ on terrorist financing to supplement the existing 40 related to money laundering, FATF emphasised the vulnerability of NPOs and charities to abuse for terrorist financing. In FATF’s view, NPOs ‘possess characteristics that make them particularly attractive to terrorists or vulnerable to misuse for terrorist financing’ including the fact that they enjoy public trust, have access to considerable sources of funds, and operate cash-intensive

¹⁹ Tom Keatinge, 2014, *Uncharitable Behaviour*, DEMOS, p.15

²⁰ Comments made by Jacob Lew at the World Bank Panel ‘Financial Inclusion not Exclusion: Managing De-risking,’ [online] Available at: <http://blogs.worldbank.org/voices/powerful-panel-weighs-progress-financial-inclusion> [Accessed 10 Nov. 2016].

²¹ Executive Order 13224, September 31, 2001: Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism

²² UN Security Council Resolution 1373, S/RES/1373, 28 September 2001

activities across borders and *often in or near areas most exposed to terrorist activity* (emphasis added).²³

As a result, FATF's new 'Special Recommendation 8' (subsequently 'Recommendation 8' following FATF's Recommendation revision in 2012) addressing the perceived vulnerability of NPOs stated that:

'Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. *Non-profit organisations are particularly vulnerable* (emphasis added), and countries should ensure that they cannot be misused:

- (a) by terrorist organisations posing as legitimate entities;
- (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.'

The wording of Recommendation 8 has been widely criticised, specifically the phrase 'particularly vulnerable', as the sector argued that it overstated the risk posed by the majority of NPOs, conflated risk (which few NPOs dispute) with actual abuse, and contributed to the high-risk assessment of the sector by banks. Whilst FATF announced a revision to this wording in June 2016, removing this specific phrase from their advice, it is widely felt that the 'genie is out of the bottle' when it comes to negative risk perceptions of the sector, and that reversing this assessment is highly challenging.

In the UK's first national risk assessment (NRA) of money laundering and terrorist financing, the Home Office and HM Treasury assessed that terrorist financing risks within the charitable sector are 'medium-high'. The NRA states that determining the end destination of funds can be made more difficult due to terrorists and charities operating in conflict areas.²⁴ This assessment particularly affects NPOs that are associated with higher-risk jurisdictions such as those in which many humanitarian, development and peace-building NPOs operate. Furthermore, in its compliance toolkit, the Charity Commission confirms that there are indeed proven instances of charities being abused for terrorist financing purposes, although stresses that this is rare.²⁵

²³ FATF, 2008, *Terrorist Financing*

²⁴ HM Treasury & Home Office, 2015, *UK National Risk Assessment of Money Laundering and Terrorist Financing*

²⁵ Charity Commission, 2012, *Compliance Toolkit - Chapter 1 Module 7: Terrorist Financing*

Despite global regulatory attention to this issue, de-risking activities by UK banks with whom NPOs hold accounts is expected to continue. The Charity Finance Group (CFG) and Charities Aid Foundation (CAF) both warn of an ‘avalanche’ of de-risking among banks.²⁶ As explored below, these decisions are as much about profitability as they are about risk, even though banks may not publicly admit it. Where revenue generated by clients is small, banks may decide to terminate relationships with such clients, or simply not establish one in the first place,²⁷ particularly if that client poses a higher risk and as a result attracts increased due diligence and compliance costs, as is often the case with NPOs.

Such expediency on the part of banks has led to action affecting NPOs that is at times disproportionate to any objective assessment of risk. Most NPOs don’t operate in jurisdictions subject to sanctions or where designated terrorist groups operate. Indeed, the vast majority of NPOs operating bank accounts in the UK are domestically focused, making rare (if any) payments overseas. Yet the pressure of de-risking has in many cases led to the indiscriminate restriction or closure of NPO bank accounts arising from considerations other than simply counter-terrorist finance requirements. The most likely explanations, as explored in the next section, are a lack of expertise on the part of banks when it comes to understanding their NPO clients, and the imperative of keeping costs down to maintain profitability. This has created a situation where banks may conflate issues of risk with those of cost and profitability.

An Expertise and Profitability Deficit

The aftermath of the global financial crisis revealed that banks had been taking many risks that they were ill-equipped to manage. Firstly, they assumed risks that they were unable to assess effectively, and secondly, they carried insufficient capital backing those risks. The result, as evidenced by the government bailout of banks such as the Royal Bank of Scotland and the collapse of banks such as Lehman Brothers, was financial calamity. This study does not seek to review the way in which these banks operated or the resulting government responses, but it is important to draw attention to the impact that the post-crisis remedial action has had on banks’ risk appetite as this has had a direct impact on the NPO sector.

A key requirement placed on banks by global regulators following the financial crisis was a need to raise the amount of capital they held to support the business they undertook. Increasing capital per unit of risk taken can be achieved in one of two ways, either raising more capital or reducing the

²⁶ Susannah Birkwood, ‘Charities could face an ‘avalanche’ of bank account closures, report warns,’ *Third Sector*, 24 May, 2016 [online] Available at: <http://www.thirdsector.co.uk/charities-face-an-avalanche-bank-account-closures-report-warns/finance/article/1396360> [Accessed 10 Nov. 2016].

²⁷ World Bank & ACAMS, 2016, *Stakeholder Dialogue on De-risking: Findings and Recommendations*

units of risk. Either way, the return that is earned on the capital carried by a bank will reduce as a result. As shareholder-owned, profit-driven organisations (to a greater or lesser extent), this development led them to reassess the type of business they undertook. Business that was expensive to run or made little return was inevitably closely scrutinised. The NPO sector has found itself caught by one (and often both) of these considerations.

Furthermore, banks subject to regulatory review because of compliance failings have needed to demonstrate to supervisors that they fully understand the business they are undertaking. As with the cost considerations, and as it relates to the NPO sector, banks are faced with a choice. They can either hire the necessary expert staff and commission the required due diligence reports, or they can close lines of business where they judge that the extra cost required to continue operating with a particular client segment, or in a particular market, is not worth the investment.

The impact of these developments on the NPO sector has been considerable, with NPOs speaking of endless due diligence and compliance requests from the institutions that bank them.²⁸ Financial institutions also stand accused of displaying a lack of understanding of the risks NPOs face, and how they manage these risks.²⁹ Confirmed by the FCA's de-risking report,³⁰ compliance also comes at a significant financial cost which has led some NPOs to hire additional staff and seek out expensive legal advice to deal with banking issues.³¹ This administrative and financial burden is particularly difficult for smaller organisations with significantly less resources. A report by the Center for Global Development notes that even large organisations with 'effective systems in place' struggle to meet the costs of compliance.³²

Counter-Terrorism and Sanctions Legislation

In conducting its business, the banking sector's assessment of its risk appetite is informed by domestic and international legislation, some of which has notably contributed to the perception of the NPO sector as 'high-risk', in particular with regard to counter-terrorism and sanctions.

The UK's definition of terrorism is:

'the use or threat of action where... the use or threat is designed to influence the governmental organisation or to intimidate the public or a section of the public, and the use

²⁸ Private interview conducted by authors

²⁹ Private interview conducted by authors

³⁰ John Howell & Co. Ltd., 2016, *Drivers & Impacts of Derisking: A study of representative views and data in the UK by John Howell & Co. Ltd. For the Financial Conduct Authority*

³¹ Private interview conducted by authors

³² Center for Cooperative Development, 2015, *Unintended Consequences of Anti-Money Laundering Policies for Poor Countries*

or threat is made for the purpose of advancing a political, religious, racial or ideological cause.³³

This definition has been adopted across the UK's counter-terrorism legislation, which consists of the Terrorism Act 2000; the Terrorism Act 2006; the Terrorist Asset Freezing etc. Act 2010 and the Terrorism Prevention and Investigation Measures (TPIMs) Act 2011.

The Terrorist Asset Freezing etc. Act 2010 concentrates on the preventative role that asset freezing can play in counter-terror finance (CTF). In principle, it gives HM Treasury the power to freeze the assets of groups or individuals accused of being involved in terrorism, domestically and internationally, thereby starving them of access to their financial resources.³⁴ The imposition of asset-freezing legislation is a key requirement of FATF, given its focus on preventing the financing of terrorism.³⁵ NPOs may therefore be committing a serious offence if they raise funds which are then diverted to designated terrorist organisations.

Whilst it is justifiable that NPOs are subject to severe penalties if they are known to have funded or facilitated terrorist activity, there is a broad feeling that general suspicion brought about by the actions of a very few bad actors have tarnished the sector as a whole, and that the legislation as it stands impedes the legitimate activities of NPOs who operate in or are associated with higher-risk jurisdictions. The perceived link between the NPO sector and potential terrorism abuse has been reinforced by William Shawcross, Chairman of the UK charitable sector's regulatory body, the Charity Commission, who stressed that terrorism and extremism are some of the most deadly threats faced by charities today.³⁶

The UK's independent reviewer of terrorism legislation, David Anderson QC has highlighted the concerns for NPOs in maintaining financial access, noting that:

'The abuse of charitable status for the funding of terrorism is a serious and substantial issue. But the wider the net of terrorism is cast, the greater the chance that financial impediments will be placed in the way of positive and worthwhile NGO activity.'³⁷

³³ Terrorism Act 2000

³⁴ The Terrorist Asset Freezing etc. Act 2010

³⁵ Tom Keatinge, 2014, *Uncharitable Behaviour*, DEMOS

³⁶ Charity Commission, 2015, *Tackling Abuse and Mismanagement 2014-15 – Full Report*, [online] Available at: <https://www.gov.uk/government/publications/tackling-abuse-and-mismanagement-2014-15/tackling-abuse-and-mismanagement-2014-15-full-report> [Accessed 9 Nov. 2016].

³⁷ David Anderson QC, *The Terrorism Acts in 2013* (Published July 2014) p.72

Put simply, the mass of counter-terrorism legislation that has been produced by governments and multilateral organisations since 9/11 has fuelled a culture of increased conservatism amongst banks.³⁸ For the context of this report, understanding this environment is important, given that some of the bank accounts closed by the Co-op supported work that may have appeared to the Bank to occur in close proximity to jurisdictions associated with designated organisations. This may have influenced the Bank's assessment of risk.

International, EU and UK sanctions legislation will also factor into banks' dealings with clients, particularly as dictated by the US and its sanctions enforcement body, the Office of Foreign Assets Control (OFAC) located within the US Treasury Department. OFAC plays a pivotal role in shaping not just US but international banking behaviour. Its role is to administer and enforce economic and trade sanctions against specific foreign countries and regimes that pose a threat to the foreign policy, national security or economy of the US, international drug traffickers, designated terrorist organisations and those engaged in the proliferation of weapons of mass destruction.³⁹

Due to the financial hegemony of the US Dollar and the resulting extra-territorial power bestowed upon and deployed by US authorities, banks around the world are effectively compelled to comply with OFAC sanctions lists or face action including fines, loss of US banking licences or being themselves designated. For example, in June 2014, BNP Paribas was fined a total of US\$8.9 billion for illegally processing financial transactions for countries subject to US economic sanctions including Sudan, Iran and Cuba, and removing references to sanctioned entities from payment messages to enable the funds to pass through the US financial system undetected.⁴⁰

Understanding the US' extraterritorial reach is particularly relevant, as we shall explain in a later section when looking at the closure of the account of the Cuba Solidarity Campaign (CSC).

Closure of Bank Accounts and Human Rights

There is a growing worldwide trend for governments to pursue policies and enact laws that constrain civil society, by de-legitimising the organisations that enable their voices to be heard. Such regulations unduly restrict Freedom of Expression, Association and Assembly.

Whilst governments provide reasons for these measures, including national security, counter-terrorism, anti-money laundering, maintaining social order and minimising foreign influence, in

³⁸ Tom Keatinge, 2014, *Uncharitable Behaviour*, DEMOS

³⁹ See OFAC Sanctions Programs and Information: <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

⁴⁰ The United States Department of Justice (2014), *BNP Paribas Agrees to Plead Guilty and to Pay \$8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to U.S. Economic Sanctions*

some cases these are pretexts. The UN special rapporteur on freedom of association and peaceful assembly, Maina Kiai, has pointed out that:

‘Some of those controls are more closely related to legitimate areas of national security or public interest... Other restrictions may be justified on the basis of national security, but fail to comply with international law under close scrutiny. Rather, they seem designed to closely regulate sectors that may pose a political rather than a security threat.’⁴¹

Maina Kiaia has also asserted that ‘The ability to access resources is inherent to the right to freedom of association, and any restrictions imposed must be necessary and proportional’.⁴²

In the UK, the closure of bank accounts of NPOs that engage in legitimate activities may be an unintended consequence of measures to combat terrorism and money laundering. But intended or unintended, this has considerable implications for human rights.

To all intents and purposes, a civil society organisation that is unable to maintain a bank account is unable to operate at all. At the very least it would be constrained in what it could do to pursue its objectives. This has implications for the realisation of several human rights – Freedom of Expression, Freedom of Association, and the range of social and economic rights that the activities of civil society organisations contribute to.

The UN Special Rapporteur has expressed concern regarding account closures in the UK:

‘Denial of banking facilities including bank accounts and funds transfer facilities without reasonable suspicion that the targeted organization or transaction constitutes support of terrorism or money laundering is a violation of the right to freedom of association. Further, singling out certain organizations on the stereotypical assumption based on general characteristics such as religion, predominant race of the organization’s membership that they are likely to participate in terrorist activities is not only disproportionate, it constitutes discrimination and is prohibited under international law’.⁴³

⁴¹ UN General Assembly, 4 August 2015, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, para 40, [online] Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/242/64/PDF/N1524264.pdf?OpenElement>

⁴² UN General Assembly, 4 August 2015, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, para 74, [online] Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/242/64/PDF/N1524264.pdf?OpenElement>

⁴³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom, 17 June 2013, para 85, [online] Available at: http://freeassembly.net/wp-content/uploads/2013/09/A-HRC-23-39-Add1_en-mission-to-UK-20131.pdf

Companies, including banks, have human rights responsibilities as set out in the UN Guiding Principles on Business and Human Rights, the global standard adopted by the UN Human Rights Council in 2011 and supported by the UK government.⁴⁴ This standard requires companies to undertake human rights due diligence to understand when and how their activities might impact upon human rights, and to take appropriate steps to prevent and mitigate any adverse impacts. The Co-operative Bank should adhere to these standards, particularly in light of its stated commitment to human rights, by ensuring they are properly integrated across functions and operations, including procedures for managing risk.

The Co-op's Troubled Times

Against this broad legislative and regulatory background that has reshaped banking risk appetite and business strategy over the past 3-5 years, the specific issues experienced by the Co-operative Bank in its recent history, most notably the crisis between 2009-2013 which led to the Bank having a capital shortfall of £1.5 billion, are also important to address as they have undoubtedly contributed substantially to the Bank's diminished risk appetite.⁴⁵ According to an independent investigation by Sir Christopher Kelly,⁴⁶ the executive management of the Bank failed to exercise prudent and effective management of capital and risk; the Group Board⁴⁷ failed in its duty as shareholder of the Bank to provide effective stewardship of an important group asset; and together, *they were unable to ensure that the Bank fulfilled its ethical principles* (emphasis added).

The Bank's ill-fated merger with the Britannia Building Society in August 2009 is often cited as a major instigator in the ensuing difficulties experienced by the Bank. Prior to the merger, the Bank was a small, full-service operation with a high cost/income ratio, equating to modest profits. The proposed merger enabled it to increase its branch footprint and generate substantial cost savings.⁴⁸ However, even if the deal made sense, its timing was inopportune as the merger came in the midst

⁴⁴ OHCHR, June 2011, Guiding Principles on Business and Human Rights: implementing the United Nations "Protect, Respect and Remedy" Framework, [online] Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁴⁵ Financial Conduct Authority, *Final Notice to the Co-operative Bank plc*, 10 August 2015, [online] Available at: <https://www.fca.org.uk/publication/final-notices/the-co-operative-bank-plc-2015.pdf> [Accessed 10 Nov, 2016].

⁴⁶ For a more detailed review see Sir Christopher Kelly, 2014, *Failings in management and governance: Report of the independent review into the events leading to the Co-operative Bank's capital shortfall*

⁴⁷ Prior to the Liability Management Exercise in 2013, the Bank was part of the broader Cooperative Group. Since its capital restructuring to address the £1.5 billion shortfall, the Bank is no longer of fully owned asset of the Cooperative Group which now owns only approximately 20% of the Bank

⁴⁸ Anthony Murray, 'Nine problems that caused the 'debacle' at the Co-operative Bank', *Co-operative News*, 30 April 2014, [online] Available at: <http://www.thenews.coop/85147/news/democracy/nine-problems-that-caused-the-debacle-of-the-co-operative-bank/> [Accessed 10 Nov. 2016].

of the global economic downturn in which the Britannia Building Society was financially weakened. The financial crisis prompted the UK regulator (then the Financial Services Authority) to require all banks to increase the quantity and quality of their capital. Sir Christopher Kelly's report explains how between 2009 and 2014, the regulator increased the Bank's total capital requirement from £1.9 billion to £3.4 billion. Whilst all banks faced greater requirements, the Co-op's was particularly large in part due to the regulator's concerns about the Bank's poor management of risk. As detailed below, the report's findings in this regard are damning as the Bank demonstrated weaknesses across all three lines of defence, and only began to address them in 2012 after repeated warnings from the regulator and a change of senior management.

Sir Christopher's assessment of these lines of defence provides some insight into future decisions that the Bank was to make with regards to the composition of its client base:

'In the first line, the business banking relationship managers showed inadequate risk awareness. The second line, which is supposed to provide independent challenge to the business and unbiased reports to the Board, was poorly organised and insufficiently resourced. The quality and focus of the third line – Internal Audit – was also deficient.'

Simply put, the Bank's ability to protect itself against the risks it faced across the spectrum, including related to financial crime, was minimal. At best it was naïve; at worst it was negligent.

The report ultimately judged that the merger was managed poorly, with both organisations bringing significant problems to the deal. Added to this, the Bank seemed unaware of its own limitations, and there is an overall view that some staff at a more senior level lacked appropriate skills and experience. According to the report, this contributed to a poor culture at the Bank including a willingness to accept poor performance; a tendency not to welcome challenge and to promote good news in favour of bad; and confusion as to who was actually accountable in a number of key areas, including risk and change management.

This was not the only problem facing the Bank. The scandal involving the Reverend Paul Flowers, a non-executive director of the Co-operative Group board who was also appointed Chair of the Bank in 2010, could arguably not have come at worse time for the troubled Bank. In November 2013 Flowers was arrested in connection with a drug supply investigation, and was ultimately charged in April

2014 for possessing cocaine, methamphetamine and ketamine.⁴⁹ As salacious as these details are, their impact on the Bank should not be underestimated; it added to a picture of incompetence and mismanagement at the Bank and Group's most senior levels, which the new management needed to address urgently and that inevitably led to strategic decisions affecting the risk appetite and business focus of the Bank.

The Co-op's Ethical Policy

In 1992, the Co-op became the first bank in the UK to have a customer-led Ethical Policy which, at its inception was based on the principle that it would not lend its customers' money to organisations that go against their values. As a consequence, since that time, the Bank has been screening new accounts from businesses and other organisations to ensure they meet its standards.

In 2014, the Bank ran a Values and Ethics Poll, with more than 74,000 participants responding. The results revealed that for 84% of respondents, the Bank's Ethical Policy was a key reason for choosing the Co-op for their banking. In January 2015, the Bank extended and strengthened its Ethical Policy in light of customer concerns as to whom the Bank should provide banking services, not just lend money. In response, the policy now excludes providing financial services to companies or organisations that are involved in irresponsible gambling and payday loans, as well as extending the commitment not to finance companies or organisations that do not responsibly pay tax in the UK as well as elsewhere. The publication of a Values and Ethics Report in 2014, according to Laura Carstensen, Chair of the Bank's Values and Ethics Committee, marked the beginning of a new era in the Bank's reporting.⁵⁰

The Co-op is by no means alone in closing the accounts of NPOs and civil society organisations in the UK. However, its situation is unique in the sense that its business model is established upon this ethical position it has nurtured. Its website advertises the history of its values and ethics, stating that 'The Co-operative Bank believes that good business and ethics go hand in hand. We succeed by providing our customers with an ethical choice and, with success, our ability to effect positive change grows.' It emphasises further that 'for more than 20 years the views of The Co-operative Bank's customers and colleagues have guided our Ethical Policy and who we provide banking services to.'⁵¹ Thus, as a significant proportion of the Bank's customers are known to have joined the

⁴⁹ BBC News, 'Paul Flowers faces drugs charges,' 16 April 2014, [online] Available at: <http://www.bbc.co.uk/news/uk-27048297> [Accessed 10 Nov. 2016].

⁵⁰ The Co-operative Bank, 2014, *Values and Ethics: Report 2014*

⁵¹ The Co-operative Bank, *The Co-operative Bank's expanded Ethical Policy reflects our customers evolving values and ethics*, [online] Available at: <http://www.co-operativebank.co.uk/news/2015/expanded-ethical-policy> [Accessed 10 Nov. 2016].

bank primarily because of its ethical positioning, in which human rights have been a key element, the decision to close the accounts of civil society organisations has left the Bank accused of hypocrisy and no longer being aligned with the goals that are defined as ‘at the heart of [its] Ethical Policy.’⁵²

Of the seven goals described in the Bank’s Ethical Policy, at least four can be argued to have been contradicted by the recent closure decisions.⁵³

- **Acting with honesty and transparency:** We ensure we’re honest and transparent in how we do business and engage externally
- **Being a responsible bank that treats customers fairly:** We seek to run the Co-operative Bank responsibly and through our actions, ensure good outcomes for our customers
- **Promoting human rights and equality:** We support the principles of the Universal Declaration of Human Rights
- **Supporting international development:** We seek to promote the development and support the reduction of poverty in developing countries.

Given the nature of the accounts closed, in that they were predominately small civil society campaign groups with human-rights or development agendas, it is not difficult to see why the Bank’s decisions and the process by which they were reached conflict with these goals. Not only has the Bank closed accounts of organisations that seek to promote human rights and equality, the process it followed was chaotic,⁵⁴ leaving organisations in the dark regarding whether and when their account would be closed. This was a result of poor and opaque communication, bringing into question the Bank’s claim that it treats customers fairly and places responsibility towards customers at the heart of its core values.

The Values and Ethics Committee

Despite the Bank’s long affinity with values and ethics, it was not until 2013 that these principles were embedded in the Bank’s Articles of Association for the first time. In particular, this took the form of establishing a Values and Ethics Committee (V&EC or the Committee), the purpose of which is to recommend to the Bank’s board the co-operative values and ethical policies of the Bank and to

⁵² The Co-operative Bank, *Our Ethical Policy*, [online] Available at: [http://www.co-operativebank.co.uk/assets/html/bank/ebooks/ethical-policy/files/assets/common/downloads/349464_CBG_MKT88916%20\(2\).pdf](http://www.co-operativebank.co.uk/assets/html/bank/ebooks/ethical-policy/files/assets/common/downloads/349464_CBG_MKT88916%20(2).pdf) [Accessed 10 Nov. 2016].

⁵³ Evidence provided to authors by Amnesty International UK

⁵⁴ Interview conducted by the authors.

advise the board on conformity with such in its operations and activities. The Terms of Reference (ToR)⁵⁵ of the V&EC also include monitoring and reporting on the following:

- customer satisfaction levels (with a focus on service levels and on the product offering in the light of the Bank's ethical policies, in each case assessed by reference to relevant customer metrics);
- alignment of treatment of the Bank's customers with its values and ethical policies;
- alignment of employee training and culture with its values and ethical policies;
- corporate social responsibility, community investment, environmental and other projects and activities of the Bank;
- the establishment of a clear 'ethical' policy and 'ethical' strategy informed by customer consultation that aligns with the commercial strategy and is reviewed annually

According to information supplied to the authors by the Bank,⁵⁶ the Values and Ethics Committee discuss the ToR during its quarterly meetings, and members of the Bank's management are required to update the Committee on all aspects that it covers. If, for example, any important changes to the way the Bank services its customers are made, the relevant business function and its Executive would be required to attend the Committee to provide further background. This would lead, depending on the challenge provided by the Committee, to a review of its policies and operations.

When undertaking a review, the Committee will consider the commercial sustainability of any business decision. Whilst therefore a decision to change the Bank's risk appetite may lead to the closure of some accounts, the Bank maintains that it is not unethical *in principle* so long as the changes are supported by a sustainable strategic plan, are proportionate, fairly implemented and do not discriminate against any specific customer or group. As revealed by the cases reviewed in this study, the way in which the Bank implemented the account closures under consideration seems far from fair.

Against these admirable criteria is set the requirement in both the ToR and the Bank's Articles of Association⁵⁷ that the V&EC's recommendations should have regard to:

⁵⁵ The Co-operative Bank, 2016, *The Co-operative Bank P.L.C. Values and Ethics Committee: Terms of Reference*, [online] Available at: <http://www.co-operativebank.co.uk/assets/pdf/bank/aboutus/governance/values-and-ethics-committee-terms-of-reference.pdf> [Accessed 10 Nov. 2016].

⁵⁶ Written response received to questions submitted with regards to the operations of the V&E Committee

⁵⁷ The Co-operative Bank, 2013, *New Articles of Association of the Co-operative Bank PLC* (Adopted by Special Resolution passed on 15 November 2013), p39

- the legal and regulatory requirements applicable to the Company and the directors;
- the need for the Company's operations to be commercially sustainable and profitable; and
- the desirability of maintaining and enhancing the public reputation and image of the Company.

Prima facie, whilst these two sets of requirements may often be in harmony, there are clearly instances where this is not going to be the case. In particular, the issues related to de-risking, anti-money laundering and counter-terror financing, and compliance more generally are areas where 'the legal and regulatory requirements applicable to the Company and the directors' *may* conflict with the treatment of the Bank's customers in a manner that is consistent with its values and ethical policies. This is evident in its decision to close accounts in order to meet its perceived legal and regulatory requirements, which put the bank on a collision course with its ethical policy. The extent to which the bank has integrated these two sets of requirements – external and internal – is the main focus of this study.

Having laid out the regulatory and Co-op-specific background, the next section of the study will present case studies of three of the civil society groups that have been affected by the closures. It will examine the procedures followed by the Bank, including its correspondence with these clients, measuring it against the ethical principles described, in order to make an evidence-based assessment of its handling of the situation.

Account Closure Case Studies

Cuba Solidarity Campaign

The Cuba Solidarity Campaign (CSC) is a British NPO that campaigns primarily against the US embargo on Cuba. CSC comprises of over 5,000 members, affiliated members and local groups. It is a non-party political NPO, with a funding model that relies on individual subscriptions and donations.⁵⁸ In August 2015, after more than 20 years of banking with the Co-op, the group was sent a letter from Stuart Coe, Head of Business and Commercial Banking that informed them their account would be closed by 7 October 2015.⁵⁹ The letter also stated that additional information had previously been requested from the CSC, a fact it strongly disputed, contending that this was the first it had heard from the Bank. The Bank confirmed CSC's assertion that its claim that it had previously sent a letter referring to information it had requested had been made in error but that

⁵⁸ Cuba Solidarity Campaign, 2016, *About Us*, [online] Available at: <http://www.cuba-solidarity.org.uk/about-us/> [Accessed 10 Nov. 2016].

⁵⁹ Cuba Solidarity Campaign, 2016, *The Co-operative Bank and the closure of the Cuba Solidarity Campaign bank account*, [online] Available at: <http://www.cuba-solidarity.org.uk/resources/cooperativebriefingapril2016.pdf> [Accessed 10 Nov. 2016].

the CSC accounts would be closed on 7 October regardless. CSC offered to provide additional information and asked the Bank to reconsider its action in light of this information. The Bank granted the CSC a one month extension on the closure (albeit the night before the account closure deadline), while stating that it would not reverse the initial decision. Furthermore, it refused to accept the organisation's offer to provide the information it had initially requested.

On 6 November 2015, the CSC had its account closed, with 'risk appetite' and 'global regulations' cited as key factors in the decision-making process.⁶⁰ After some further exchanges, the Bank's CEO Niall Booker confirmed that the closure related to the risk arising from US government sanctions on Cuba imposed by OFAC.⁶¹ This explanation was met with fierce opposition, the CSC arguing that acting in this manner goes against British sovereignty by prioritising extraterritorial legislation over British interests. In a letter to Hugo Swire MP, previously the Minister of State at the Foreign Office, the CSC states that 'the extraterritorial sanctions are a direct threat to British trading interests by penalising British companies, organisations and individuals which wish to work with the island.'⁶² In particular, it cited legislation brought in to counteract the international reach of US regulations: the European Council regulation EC2271/96⁶³ and in the UK, the Protection of Trading Interests Act 1980, Order 1996.⁶⁴

The CSC also received parliamentary support from Cat Smith MP, Chair of the All Party Parliamentary Group on Cuba, who argued that 'it cannot be right that this UK based organisation should be penalised due to the United States blockade policies when the organisation is doing nothing more than promoting better UK-Cuba relations in accord with government policies.'⁶⁵ Hugo Swire MP confirmed that with regards to Cuba, multilateral sanctions do not exist and that 'we [the British Government] are firmly of the belief that US sanctions should not impact UK or EU attempts to conduct business with Cuba.'⁶⁶ Nevertheless, the Co-op, consistent with many other UK banks,

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Cuba Solidarity Campaign, *Letter to Rt. Hon Hugo Swire MP*, 19 April 2016, [online] Available at: <http://www.cuba-solidarity.org.uk/resources/csc%20letter%20to%20hugo%20swire.pdf> [Accessed 9 Nov. 2016]

⁶³ Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

⁶⁴ The Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996

⁶⁵ Cuba Solidarity Campaign, 2016, *The Co-operative Bank and the closure of the Cuba Solidary Campaign bank account*, [online] Available at: <http://www.cuba-solidarity.org.uk/resources/cooperativebriefingapril2016.pdf> [Accessed 10 Nov. 2016].

⁶⁶ Letter provided to us by Cuba Solidarity Campaign

chose to prioritise the influence of US regulations on its decision-making despite there never having been any accusation of wrongdoing or malpractice against CSC.⁶⁷

The broad base of the CSC's funding comes from subscriptions, and thus the process of transferring standing orders to their new bank (Unity Trust) was complicated and time consuming. A year on from the account closure, they have successfully moved 95% of these standing orders, sustaining themselves financially. Although difficult to measure, they claim to have lost £10-20,000 and to have been burdened with the process of minimising financial damage from the Co-op's decision, taking vast amounts of the team's limited time over a period of four months. Ultimately, the group cannot understand why the Bank acquiesced to US policy, targeting a campaign organisation such as theirs. The overall process has been described as 'shambolic'⁶⁸ with a series of mixed and unexplained messages, including letters 'sent in error' painting a picture of incompetence and poor management and oversight at the Bank.

Nicaragua Solidarity Campaign

The Nicaragua Solidarity Campaign (NSC) works with Nicaraguan organisations and social movements struggling for economic and social justice by promoting and seeking support in the UK for their activities in Nicaragua. It is made up of approximately 550 individual members throughout the UK, and has a number of local organisations who have twinning links to projects in Nicaragua.⁶⁹ A twinning link is a means of encouraging mutual understanding and friendship between people, towns and communities in different countries and involves small-scale development projects, such as organic farming, business skills training and renewable energy.⁷⁰

During 2015, multiple local NSC groups including in Tavistock, Bristol, Norwich and Leicester, received 21-page 'enhanced due diligence' forms from the Co-op requesting further information on their activities, including details of the work undertaken in Nicaragua, foreign payments, ownership structure and trustee details. According to NSC, the forms were inconsistent in content, and groups were given different time periods in which to return them. When forms were returned, no notification of receipt was given leaving the organisations unsure of the future process and whether their banking access would be affected.

⁶⁷ Cuba Solidarity Campaign, 2016, *The Co-operative Bank and the closure of the Cuba Solidary Campaign bank account*, [online] Available at: <http://www.cuba-solidarity.org.uk/resources/cooperativebriefingapril2016.pdf> [Accessed 10 Nov. 2016].

⁶⁸ Interview conducted by the authors.

⁶⁹ Nicaragua Solidarity Campaign, 2016, *Who we are*, [online] Available at: <http://www.nicaraguasc.org.uk/about-us/> [Accessed 9 Nov. 2016].

⁷⁰ Evidence provided in writing by the Nicaragua Solidarity Campaign

Two groups have been particularly affected, Wales NSC and the Sheffield Esteli Society. The latter received notification in April 2016, informing it that its account would be closed. This happened in June 2016 with the Bank stating that after extensive research the charity did not meet its requirements or allow the Bank to fulfil its obligations.⁷¹ The organisation had not received any notification prior to this letter – despite its long-standing relationship with the Bank (approximately 30 years), nor were they given the opportunity to provide information relating to their financial activities, which they would readily have done. The Sheffield Esteli Society transferred relatively small amounts to Nicaragua each year, between £2-3,000, which went into community projects such as music, theatre groups and maternity care. They now bank have a new banking relationship, stating that the move was administratively cumbersome, made more difficult by the small and voluntary nature of their organisation.⁷²

In the case of Wales NSC, it received the enhanced due diligence form in May 2015 stating that it had 30 days to complete the questionnaire and that failure to respond may affect access to its bank account. By their own admission they did not act on this.⁷³ The group received no reminder, and then in mid-July 2015, Wales NSC was notified that its account would be closed on 7 October although a review might be available if the requested information was provided.⁷⁴ Curiously it was suggested that a positive review would mean that the account closure decision would remain but that the group might be able to open a new account. The group immediately contacted the Bank and offered to provide this information, a process that took 2-3 weeks (not because the form was particularly cumbersome, more because of the difficulties getting information from committee members). Having submitted this information, Wales NSC received no reply and as the original deadline of 7 October approached contacted the Bank to determine the outcome. They were told that for the time being they could keep the account although the original decision remained in place. Fearing that the account was effectively subject to a suspended sentence and could be closed at any time, Wales NSC took the decision to move the account and after being rejected by another high-street bank, successfully opened a new account elsewhere. As far as they are aware, their Co-operative Bank account was never officially closed.

⁷¹ Hazel Sheffield, *The Independent*, 'Co-op Bank closes more accounts belonging to charitable organisations,' 31 May 2016, [online] Available at: <http://www.independent.co.uk/news/business/news/co-op-bank-closes-more-accounts-belonging-to-charitable-organisations-a7046996.html> [Accessed 2 Nov. 2016].

⁷² Interview conducted by the authors.

⁷³ Interview conducted by the authors.

⁷⁴ It is worth noting that according to an NSC member interviewed by the authors, twin organisations based in the US continue to have banking services without any disruption. In the authors' experience it is unusual for UK banks to apply stricter procedures than in the US.

Over its life, Wales NSC has made very limited transfers to Nicaragua, only moving money to the country on a few occasions between 2009 and 2012 to fund a project for street children. Its main financial activity involved managing donations of £5-10,000 per year to support their stalls and newsletters. Although Wales NSC never had its account formally closed, the impact of choosing to move its account from the Co-op has been considerable. Like many of those that lost banking access from the Co-op, Wales NSC is a small, volunteer-run organisation relying on individual donations made by standing order. Moving the account has meant that donors have had to be contacted to reinstate their standing orders to Wales NSC's new bank – a difficult task given that many of the donors were longstanding and no longer contactable. Thus far only 20 out of 65 subscriptions have been renewed, resulting in a material loss of revenue for the group. Furthermore, consistent with the experience of other groups that faced Co-op account closures, correspondence from the Bank was inconsistent and communication was poorly handled.

In correspondence between the main NSC branch and the Bank's Executive Resolution Manager, the Bank emphasise that decisions to close certain NSC branches were not political or discriminatory, but based on legal and regulatory rules and made with the support of the Bank's Values and Ethics Committee.⁷⁵

Palestine Solidarity Campaign

The Palestine Solidarity Campaign (PSC) is a UK-based campaigning organisation working to secure Palestinian human rights. In October 2015, the group's account was closed, along with a number of local PSC members including Bristol PSC, Norwich PSC, Computers for Palestine and International Women's Peace Service Palestine, with the Bank citing its 'risk appetite' as the reason.⁷⁶ This was in spite of the organisations complying with the Bank and providing any information requested.

Following the decision, they received legal advice which concluded that the decision was discriminatory and in contravention of the Equality Act 2010. ITN solicitors stated that the Bank's 'failure to provide any reasons for the closure of PSC's account, which has been compounded by your failure to provide appropriate disclosure, leads to the conclusion that the decision to close the account is based on:

1. Our client's cogent belief in Palestinian rights, including the right to self-determination and the right of return, and to oppose Israel's occupation and violations of international law.

⁷⁵ Letter sent to the NSC from Carol Houghton, Executive Resolution Investigator at the Co-operative Bank, 9th June 2016 (Provided by the NSC to the authors.)

⁷⁶ Palestine Solidarity Campaign, 2015, *Co-operative Bank closes PSC's Account*, [online] Available at: <https://www.palestinecampaign.org/co-operative-bank-close-pscs-account/> [Accessed 5 Nov. 2016].

2. The nationality or religion of the Palestinian people.⁷⁷

In November 2015, the PSC called for a boycott of the Bank, urging customers to close their accounts in response to its actions.⁷⁸ What followed was a statement given by the Bank to several media outlets including the Daily Telegraph, the Daily Mail and the Jewish Chronicle (but not to the PSC itself) stating that the PSC's accounts had been closed as it was not possible to complete satisfactory due diligence checks to ensure that funds do not 'inadvertently fund illegal or other proscribed activities.'⁷⁹ In what PSC viewed as a politically motivated decision, which completely contradicted the Bank's ethical principles, this overt linkage between the group and international terrorism was highly damaging for an organisation that relies on its reputation and public support.⁸⁰ The Chief Executive of Acevo, the Association of Chief Executives of Voluntary Organisations, Sir Stephen Bubb said that it was a 'ludicrous way to treat charities' and that the Bank 'appeared to have put their risk appetite above their founding principles of co-operation and community cohesion.'⁸¹

The effects on the organisations have been manifested both politically and administratively. On the administrative side, much like the Cuba and Nicaragua groups, their funding model relies on 1400 standing orders, the updating of which meant that their finances were significantly disrupted.⁸² The dialogue between themselves and the Bank was chaotic with an overlap between notification of account closure and requests for additional information. In PSC's view, the political language, particularly associating them implicitly with terrorism, was unacceptable and resulted in the group being added to the World Check database and thus being flagged as a compliance risk across the banking sector. Supporting Palestinian human rights is a challenging area in which to work in and the implications of an ethical bank making public statements such as these, have had a lasting impact on PSC, and discourage people from 'challenging the status quo'.⁸³ As with others interviewed for this

⁷⁷ Marie-Claire Kidd, 'Co-op Bank faces legal action over Palestine account closures,' *The Co-operative News*, 11 Dec 2015, [online] Available at: <http://www.thenews.coop/100111/news/banking-and-insurance/co-op-bank-faces-legal-action-palestine-account-closures/> [Accessed 5 Nov. 2016].

⁷⁸ Palestine Solidarity Campaign, 2015, *Take action: close your Co-operative Bank Account*, [online] Available at: <https://www.palestinecampaign.org/take-action-close-your-co-operative-bank-account/> [Accessed 10 Nov. 2016].

⁷⁹ See for example: Camilla Turner, 'Activist group linked to Jeremy Corbyn has accounts closed amid fears it may be funding terrorism,' *The Daily Telegraph*, 29 November 2015, [online] Available at: http://www.telegraph.co.uk/news/politics/Jeremy_Corbyn/12023669/Activist-group-linked-to-Jeremy-Corbyn-has-accounts-closed-amid-fears-it-may-be-funding-terrorism.html [Accessed 3 Nov. 2016].

⁸⁰ Interview conducted by the authors.

⁸¹ Civil Society, 'Bubb intervenes after Co-operative Bank closes charity bank accounts', 27 November 2015, [online] Available at: <https://www.civilsociety.co.uk/finance/bubb-intervenes-after-co-operative-bank-closes-charity-bank-accounts.html> [Accessed 9 Nov. 2016].

⁸² Interview conducted by the authors.

⁸³ Interview conducted by the authors.

study, PSC have now opened an account with a new bank that they feel is much more aligned with and understanding of the group's mission.

View from the 'Save Our Bank' Campaign

When the majority ownership of the Bank was sold by the Co-operative Group in 2013, a number of the Bank's customers, supported by Ethical Consumer magazine, founded the Save Our Bank Campaign, to ensure that the Bank retained its ethical policy.⁸⁴ As a result of the account closures, they started a campaign via the coordination website 38 Degrees calling on the Bank to review its decisions and to assist groups that wanted to stay with the Bank in satisfying the required legal and regulatory obligations.⁸⁵ They have had significant contact with the key stakeholders throughout this process.⁸⁶

Despite the deficient way in which customers were dealt with at the time, and the clear lack of understanding and training demonstrated by the actions of Bank staff, in the view of Save our Bank, the Co-op has reflected and consciously changed the process by which it makes and enacts such decisions today. The process the Bank undertook was symptomatic of its financial difficulties and previous lack of risk management processes, something the Bank itself appears to accept. However, Save our Bank felt that there was still a place for the Co-op as a positive influence, in so far as it pursues an ethical approach to banking, and they were not supportive of an overall boycott of the institution.⁸⁷

Response from the Co-operative Bank

As part of this study, the Bank agreed to be interviewed in order to present its side of the story regarding the decisions made.⁸⁸ It also provided written responses to supplementary questions with regards to the workings of the V&E Committee. Whilst staff were unable to discuss the specific circumstances surrounding individual customers, they provided historical context, outlined the regulatory environment in which the Bank found itself at the time of its 2013 troubles, and provided both an overview of the Bank's policies and procedures that led to the closure of some accounts and the developments that have occurred since.

⁸⁴ Save Our Bank, 2016, *Building a union of Co-op Bank customers*, [online] Available at: <https://saveourbank.coop/> [Accessed 6 Nov. 2016].

⁸⁵ 38 Degrees Campaign, *Co-op Bank: Stop closing accounts of Palestine and other support groups*, [online] Available at: <https://you.38degrees.org.uk/petitions/co-op-bank-stop-closing-accounts-of-palestine-and-other-support-groups> [Accessed 6 Nov. 2016].

⁸⁶ Interview conducted by the authors.

⁸⁷ Interview conducted by the authors.

⁸⁸ This included staff from Risk and PR & Communications.

They sought first to emphasise that despite the view of the affected parties and their subsequent campaigns, the Bank had taken a carefully considered approach to closing the accounts, balancing the issues against the perceived risks. Therefore, whilst decisions to an outsider may have seemed politically motivated, its role was to be agnostic towards current affairs, and to make a judgement commensurate with its own risk appetite, informed by a variety of things including FATF guidance, sanctions lists, CTF/AML legislation, and anti-bribery and corruption laws.

A key accusation levelled at the Bank, is that its actions contradicted its ethical positioning. The Bank reiterated that its V&E Committee was fundamentally *apolitical*, and whilst this ethical stance underpins how the Bank is run, it cannot supersede the need to manage risk and prevent financial crime. In their view, being a responsible member of the financial system means taking decisions to protect market integrity; and if this means exiting customers that, in their view, may threaten this integrity it is their responsibility to do so. A bad transaction can be small but this may not stop regulators from exacting enormous fines against any institution that allows one under its watch.

In its written response, the Bank stated that the decision to close a number of accounts was the result of changes to the Bank's risk appetite and risk management processes and regulatory obligations. These were approved by the Bank's board, and subsequently reviewed by the Values and Ethics Committee, which supported the Board's decision. Following media and stakeholder interest in the closure of accounts, in September 2015 the V&EC commissioned an internally-prepared report to be submitted for consideration. On reviewing this report, the Committee remained satisfied that the closures were neither politically-motivated nor targeted at any specific jurisdiction or customer type; the decisions were ultimately based upon changes to the Bank's risk appetite and strategic plan, both of which the V&EC supported.

In response to the apparent contradiction between the ethical principles laid out in the V&EC's ToR and the legal and regulatory requirements applicable to the Bank and the directors, the Bank stated that it believed it was inherently unethical for it to not comply with its legal and regulatory obligations. Therefore, any business decision that is driven by the need to meet these requirements cannot be considered unethical in principle.

The Bank explained that prior to the troubles that were revealed in 2013, it had over-stretched its business model, had not been as profit-focused as other banks and needed to return to being a domestically focused, retail and 'small and medium enterprise' (SME) institution. This need to refocus justified the decision to undertake the business review and simplification process that included requesting enhanced due diligence information from a number of customers. Banks

ultimately have to make a profit, and they were keen to stress that it would not be able to offer *any* 'ethical banking' services at all if it ceased to exist, an outcome that, reports suggest, came dangerously close to being realised during the Bank's crisis years. Indeed, the Bank was upfront about the compliance failings it faced with no real AML/compliance structure in place, meaning that it essentially had to play 'catch-up' with other high street banks that had already undertaken a significant risk assessment of their clients.⁸⁹ This inevitably affected its exit process, which was procedurally poor, both in how it corresponded with customers under investigation and how it articulated its policies in a public manner.

However, they contended that the Bank's level of engagement with customers was still considerably higher than its counterparts, and that it had learnt from its previous mistakes. For example, in another new initiative, an 'Exit Forum' was created in December 2015 which engages stakeholders from across the business in order to consider new and emerging processes and projects that may result in the exit of customers. Its purpose is to ensure that all parts of the Bank are aware of the changes taking place, consider the resulting impact and potential unintended consequences, and/or identify gaps in existing policy or processes. The Exit Forum can escalate any issue that it considers to have a major impact on the Bank to be considered by either the Bank's executive Committee or the V&EC. The Exit Forum comprises members from a number of business lines, including Corporate Communications, the V&EC, Products and Marketing, Second Line Risk, AML Operations, Regulatory Risk and Customer Response.

Through this, they now claim to exhaust all possible steps before exiting a customer; even giving them suggestions as to steps they can take to ameliorate some of the risk, for example, by registering with the Charity Commission. In our experience, this kind of outreach is unique.

Overall, the Bank estimated that the scale of NPO, civil society, and other similar accounts closed amounted to approximately one percent of the total number it banks, and that in the UK they fulfil a demand that still clearly exists for an ethical bank. As an institution, it is evidently not yet out of its remedial period and will continue with domestic prioritisation and a simplified model in order to sustain itself. Quite simply, the Bank by its own admission was not equipped to deal with its customer base. As a result, the de-risking process that it entered into was mismanaged and caused small organisations to suffer greatly.

⁸⁹ This included the hiring of David Bagley, a former senior compliance officer at HSBC, who resigned following revelations that HSBC had been laundering money for Mexican drug cartels

Findings

Whilst the measures taken by the Co-op since this recent bout of closures are to be welcomed, this study must ultimately make a judgement as to whether its conduct in these instances was consistent with its ethical principles. In light of the evidence collected, particularly with regards to its management of the accountholder due diligence and closure process, it undoubtedly fell short. Its goal of 'being a responsible bank that treats customers fairly'⁹⁰ was not met when dealing with the civil society organisations under consideration. The overwhelming picture painted was of a Bank that had no firm handle on what its individual components were doing, resulting in mixed messaging and the inability of customers to access the banking staff responsible for their accounts when needed. Organisations were left in the dark as to if and when their account would actually be closed, why they were being closed, and what the accountholders might be able to do in order to maintain their accounts open.

The failures of the Co-op are brought into even sharper focus when taking into account the small, voluntary nature of the organisations that had their accounts shut and the lack of support they received from the Bank as they set up new accounts elsewhere. The stress and anxiety placed upon many of them could easily have been avoided with a clearer and more transparent communications strategy. Whilst this investigation acknowledges that the Bank's poor conduct was borne partially of the fact that it was severely lagging its counterparts in terms of how it managed AML and compliance, this does not absolve it of its responsibility to treat its customers fairly and promote human rights and equality. It is also worth noting that the case study sample is limited, covering only a small proportion of overall accounts closed (which is estimated at 400). Therefore, we cannot analyse the full extent and impact of the Co-op's actions. However in light of the evidence gathered, it is reasonable to assume that many others would have had similar experiences.

Whilst the Bank's treatment of long-standing customers therefore departed from its ethical principles, the Bank's judgment that these accounts were no longer compatible with its risk appetite was intended to reflect the duty the Bank holds to manage its risk responsibly. It is not appropriate for the Bank, as it does, to justify compliance with legal and regulatory obligations as necessary to give effect to its ethical principles. By making such a statement the Bank is to all intents and purposes justifying its approach of setting aside these principles. Equally, it is the authors' view that failing to manage risk appropriately, particularly in light of the troubles the Co-op had faced, would

⁹⁰ The Co-operative Bank, 2016, *The Co-operative Bank P.L.C. Values and Ethics Committee: Terms of Reference*, [online] Available at: <http://www.co-operativebank.co.uk/assets/pdf/bank/aboutus/governance/values-and-ethics-committee-terms-of-reference.pdf> [Accessed 10 Nov. 2016].

be irresponsible. As discussed further in the conclusions to this study, weighing responsible management and ethical policies is something that the Bank must work harder to demonstrate and communicate in the future.

Conclusions and Recommendations

In recent years, the Co-op experienced considerable and primarily self-inflicted trauma which revealed serious shortfalls of capital, management and governance, including a lack of financial crime compliance which could charitably be described as 'naïve'.⁹¹ This led the Bank to take a number of significant restructuring measures across the board, including 'catching up' with what had become accepted and expected financial crime compliance requirements in the UK banking sector. The distribution of enhanced due diligence forms to a large number of customers, including those featured in this study, is evidence that the Bank had very little idea of who its customers were and what business they did.

The inevitable occurred; a knee-jerk reaction to catch up and close the gulf with peer banks in the UK, with the resulting negative consequences for at least 400 accountholders. The facts of, and background to the case are clear. The questions this study has sought to answer are whether the Co-op acted consistently with its Ethical Policy; how well this was integrated into its approach to addressing its perceived financial crime risk management shortfall; and whether it has implemented lessons from these actions.

In answering the first two questions, this study assesses that the Co-op faced, and will continue to face, a severe decision-making conflict as evidenced by the Terms of Reference of the Values and Ethics Committee. On the one hand, the Bank should treat customers in a manner consistent with its values and ethical policies, including promoting human rights and treating customers fairly; on the other hand, the Bank is required to consider its legal and regulatory requirements that are (unlike its business positioning) common to all banks in the UK. Some may argue that the Co-op's Ethical Policy should set its decision-making in this field apart from other banks. However, whilst certain areas of banking allow for differing standards as evidenced by the Co-op's ethical lending policy, financial crime compliance is not one of them. Indeed, the Bank seeks to justify its actions in the context of its Ethical Policy, asserting that it is inherently unethical for it to fail to comply with its legal and regulatory obligations thus putting its sustainability or licence to operate at risk. But, as Sir Stephen Bubb has noted, the Bank put its risk appetite above its founding principles of co-operation and community cohesion. In the state the Bank found itself in, against the regulatory backdrop it

⁹¹ Interview conducted by the authors.

faced, this prioritisation was somewhat inevitable, though not an excuse for a poorly executed and communicated approach with an unclear rationale for targeting the small NPOs that are the subject of this study.

Which bring us to the most important and pertinent question, what has Co-op learnt from this experience? What is clear from interviews conducted for this study is that the Bank's communication in conjunction with its account closure process was at best incompetent, with mixed and conflicting messages being sent (if communication was forthcoming at all), and at worst hostile, with the release of an unnecessarily provocative press statement. This failure of communication suggests a lack of prioritisation within the Bank of the account management process. This is something which the establishment of the 'Exit Forum' seeks to address. The commitment that the Bank suggests it is making through the Exit Forum to ensuring that all issues are considered and alternatives proposed to accountholders before an account is closed is welcome and, in the experience of the authors, unique amongst High Street banks. If these and other measures to which the Bank has stated it is committed are to have credence, the Bank must ensure that they are transparent, properly monitored, independently validated and subject to external reporting.

Whilst remedial action is welcome, it is the purpose of this study to judge the extent to which the Co-op's account closure action failed to meet its self-defined Ethical Policy. Measured against these standards, the Bank's actions clearly failed. As assessed in this study, the Co-op failed to act with honesty and transparency in its dealings with affected customers and cannot begin to claim that it treated customers fairly to minimise harmful consequences for them. Even if closures were warranted, the way they were handled was incompetent, communication was (at best) poor and haphazard, and nothing appears to have been done to assist customers whose accounts were closed to minimise the resulting disruption, for example by redirecting standing orders. Furthermore, many of the accounts that were closed related to organisations that seek to promote human rights and equality, contradicting the Bank's assertion that it promotes these issues. As Sir Christopher Kelly's report reveals, the chaotic state into which the Bank had fallen meant that it was unable to fulfil its ethical principles.

In sum, a confluence of events in 2012-2013 led the Co-op to make account closure decisions which, had it had in place the risk management and process structures it claims it has today, may have turned out differently for many of those that lost their Co-op banking access as a result. It is up to the Co-op to demonstrate now that it has indeed learnt from this experience and that it is able to restore the confidence of those, such as Amnesty International, who support the Co-op for its ethical

stance. This requires the Bank to integrate its ethical policies into its risk management processes, and to demonstrate that it is operating transparently and treating its customers fairly.

This study recommends that in order to give effect to the Bank's Ethical Policy, the following measures are taken with appropriate disclosure in the annual Values and Ethics Report:

- The Co-op acknowledges deficiencies in its de-risking approach with regards to integrating its ethical principles, and commits to ensuring that its customer account decision-making process is conducted according to a more coherent framework that is consistent with these principles;
- The Co-op monitors implementation of its ethical policy, adopts metrics for benchmarking performance, validates these independently, and reports publicly on progress;
- The Co-op publishes a clear explanation of its client bank account risk management process, including annual indicators of accounts reviewed and decisions taken with associated reasoning beyond the generic;
- The Co-op discloses details of the Exit Forum process with a commitment to exhaust all possibilities before considering account closure, including working with customers to help address risk appetite concerns;
- The Co-op clarifies its associated communications strategy and includes a commitment not to make public statements that might harm the clients in question;
- The Co-op provides a commitment to assist with account moves (including the redirection of standing orders) if accounts are closed.

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Although currently staff members at RUSI, this report has been commissioned independently and reflects the views of the individual authors and not those of the Royal United Services Institute.