KEVIN HOLLINRAKE MP

HOUSE OF COMMONS

LONDON SW1A 0AA

Andrew Bailey
Chief Executive
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

9th August 2018

Dear Andrew,

It is the firm view of our All-Party Parliamentary Group (APPG) on Fair Business Banking that the current regulatory framework is not adequately equipped to deal with the scandals that we have seen over the past years. The lack of accountability of senior figures in the financial services industry for the widespread destruction of British businesses undermines confidence in our financial services sector and is a threat to the integrity of the sector as a whole. Our entire economic model depends on fairness, transparency, accountability and justice not only being done, but being seen to be done. As things stand, this is not the case.

RBS/GRG Phase 2

The APPG is naturally disappointed and extremely concerned by the announcement that no further action will be taken by the FCA with regard to the investigation into RBS' treatment of business customers. Phase 1 of the Section 166 independent review revealed the wholesale mistreatment of small business customers, with the report identifying a number of areas in which this mistreatment was widespread and systematic. The report determined that the abuse caused "material financial distress" and that the bank "failed to manage conflicts of interest", thereby creating opportunities for its subsidiary, West Register, which "purchased property primarily out of administration". GRG was a profit centre that in 2011 alone recorded a "Contribution" of £1.18bn. RBS was also criticised by the authors of the report for offering "narrow compliance" and being "unduly defensive" during the inquiry. Crucially, the report laid the blame directly at the door of those in charge; "GRG management was aware" of the abuses, which happened as a direct result of the "priorities GRG pursued".

The original terms identified in Phase 2 of the inquiry were intended to identify those individuals responsible for this mistreatment. Although the "widespread and/or systematic" criteria for Phase 2 to proceed were clearly met, you appear to have infringed the terms of your own Final Requirement Notice by disinstructing the Skilled Person, Promontory, and undertaking the next stage internally. You will remember that earlier this year we wrote to you expressing our concern about this decision.

The FCA statement on its Phase 2 findings on 28th July 2018 concluded that its "powers to discipline for misconduct do not apply". It could find "no evidence of dishonesty, lack of integrity", any "absence of competence or capability", anyone acting "recklessly or with a dodgy ethical compass" and did not "make findings about misconduct" amongst the senior management team. By its own rules, the message the FCA's decision sends to the victims of RBS GRG is that it believes senior managers at GRG acted honestly and with integrity as well as demonstrating competence and capability in their conduct. We fail to understand how a senior manager is acting with integrity when prioritising profit for the bank over

the interests of their customers. Your findings seem to completely contradict those of Promontory and therefore begs the question, how then did such a scandal and an injustice of such a magnitude take place?

The assertion in the statement that the increase in business transfers to GRG "was a consequence of the financial crisis rather than any strategy on the part of GRG" flies in face of evidence that we have heard, stating that senior managers actively sought opportunities to move good businesses from mainstream divisions into GRG. It also disregards RBS' actions that contributed to financial distress prior to transfer, such as withdrawal of overdrafts, down-valuation of assets and mis-selling of IRHPs, all conveniently outside the scope of the investigation.

The FCA has promised to publish a "fuller account" of its findings. This is not acceptable and would again contravene its own Final Requirements Notice, which not only has to consider the "root causes" and "whether it was sanctioned by management" but also has to be drafted in a way that can be published. We need a comprehensive report of the same quality and depth as provided by Promontory that deals with all the questions as set out in the Notice. The public, press and parliamentarians can then determine whether the FCA could and should have taken action against senior management and whether we need to provide the regulator with more powers so that the senior managers at RBS/GRG, of which many remain working in the banking sector, are held to account. But also, perhaps, by a consideration of their fitness and propriety to work in the sector by their current or future employers.

Please would you:

1. Commit to meeting the reporting conditions of the Final Requirement Notice by considering the "root causes" and "whether it was sanctioned by management" detailing clearly who was responsible for the misconduct and publish the report in full and without redactions?
2. Detail why your findings contradict those of the Skilled Person, as detailed in paragraph 4?

Fraud by Abuse of Position

For years we have been hearing about mis-selling and misconduct, yet the consequences of these actions, which are described in the mild language as mere misdemeanours, have had a catastrophic effect not only on individual lives, families and livelihoods, but on confidence in our entire system. I refer you to section 4 of the Fraud Act 2006:

> *Fraud by abuse of position*
>
> *(1) A person is in breach of this section if he—*
> *(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,*
> *(b) dishonestly abuses that position, and*
> *(c) intends, by means of the abuse of that position—*
> *(i) to make a gain for himself or another, or*
> *(ii) to cause loss to another or to expose another to a risk of loss.*
> *(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.*

It is time to start calling out this behaviour for what it is. In evidence to the Treasury Select Committee, Tony Boorman, Managing Director of Promontory stated that there was evidence that some businesses had been targeted for transfer to GRG based on their value to the bank rather than the level of their

distress. This is fraud. Even if not considered widespread, these individual cases need to be investigated by the relevant authorities.

Will you:

3. Confirm that you will refer the evidence offered to the Treasury Select Committee by Tony Boorman of Promontory, whereby businesses had been targeted for transfer to GRG based on their value to the bank rather than the level of their distress, to the police or crime agencies?
4. Confirm the arrangements/policy of the FCA with regard to referring acts of suspected fraud to the appropriate agencies?

The Wider Regulatory Environment

These issues are not isolated or specific to RBS. Indeed, we have seen proven cases of criminal fraud and serious allegations of cover up at Lloyds/HBOS. Bearing in mind that the FCA states that it has such limited powers with regard to enforcement, we have deep concerns regarding other investigations currently underway, in particular Lloyds and HBOS Reading.

Our All-Party Parliamentary Group does make the case for more powers to be given to the regulator and, as outlined in our *Fair Business Banking for All* report, we feel that bringing SME lending under 'conduct of business' rules would make it easier to take disciplinary actions and for businesses to get access to justice and compensation through our courts.

As you are aware, we remain concerned not only about providing redress and compensation for victims of past misconduct, but also that, moving forward, sufficient lessons have been learnt and that the businesses in our country are suitably protected from similar behaviour in the future.

5. Will you commit to supporting our calls for a new Financial Services Tribunal to provide a new primary dispute resolution mechanism? This would complement any alternative dispute resolution improvements suggested by the FCA or UK Finance.
6. Would the APPG's recommendation to extend Section 138D of the Financial Services and Markets Act (FSMA) 2000 to businesses give the FCA the powers necessary to bring enforcement proceedings against 'Conduct of Business' rules?
7. Would an amendment to the FSMA (RAO) 2001 to include unregulated activities, such as commercial lending, give the FCA the powers to bring enforcement proceedings in the future?
8. If the FCA is not able to bring enforcement action under the Senior Managers Regime in this case, under what circumstances would the FCA have reasonable prospects of success for holding individuals to account? Would your findings have given rise to disciplinary action had the Senior Managers Regime (SMR) applied?

A Public Inquiry

We have previously discussed dispute resolution, compensation and the standards of turnaround units in financial institutions. We have also written to you recently with regard to our concerns about the ad-hoc compensation scheme currently underway for the victims of the HBOS Reading Fraud, and we remain frustrated that it is wholly within the 'gift' of institutions to determine the level of compensation for people who have had their life's work taken from them.

Our regulatory system allows RBS and Lloyds to operate internal compensation schemes for its own offences, for which is it both judge and jury. RBS has returned only £6.7m in the way of compensation for those who have suffered, despite profiting to the tune of billions of pounds from its misconduct. The banks operate a policy of 'unnatural selection', allowing cases that they can win to go to court whilst imposing gagging orders to prevent those who have been lucky enough to at least get something back from speaking out. This position is wholly unacceptable and untenable.

The fact is that whilst there have been several individual investigations into various scandals and organisations, most of which have been (or are being) held behind closed doors or in-house at financial institutions or the regulator, there has yet to be a full-scale public inquiry into what, from our experience, is often savage treatment of businesses. In reality, many of these businesses were—or could have been with the appropriate support—viable. This occurred not only during the peak of the financial crisis, but continues today.

This is not limited to a few individual institutions. Dunbar Bank, Clydesdale and Yorkshire, Lloyds, HBOS, RBS, Acorn Finance, and Cerberus, to name just a few, are all names that regularly feature in complaints. Not all of these institutions are regulated or, indeed, still exist but they all follow a distinctly similar pattern.

Whilst we understand steps have been taken with the SMR, in reality the ecosystem in which these events have occurred are extremely complex and reach into not only the behaviour and standards in so-called turnaround units, but also the behaviour and regulation of accountants, LPA receivers, surveyors and insolvency practitioners.

The APPG is very clear that there has been no substantive legislative change to prevent such occurrences from happening again. In order to get to grips with this issue we are calling for a full public inquiry that can cut across institutional and sectoral lines and investigate the complex, and often incestuous, relationships between financial institutions, their numerous advisors and related professions, and the complex regulatory (both statutory and self-regulatory) framework that is supposed to uphold the highest standards.

I enclose the House of Commons' Library briefing on Public Inquiries. We believe that the thresholds for holding an inquiry have all been met. The Public Administration Select Committee's 2005 report, *Governing by Inquiry,* proposed six principal purposes for which an inquiry might be held, accordingly identified by Lord Howe:

- Establishing the facts—providing a full and fair account of what happened, especially in circumstances where the facts are disputed, or the course and causation of events is not clear;

- Learning from events—and so helping to prevent their recurrence by synthesising or distilling lessons which can be used to change practice;

- Catharsis or therapeutic exposure—providing an opportunity for reconciliation and resolution, by bringing protagonists face to face with each other's perspectives and problems;

- Reassurance—rebuilding public confidence after a major failure by showing that the government is making sure it is fully investigated and dealt with;

• Accountability, blame, and retribution—holding people and organisations to account, and sometimes indirectly contributing to the assignation of blame and to mechanisms for retribution;

• Political considerations—serving a wider political agenda for government either in demonstrating that "something is being done" or in providing leverage for change.

An inquiry would take account of the points raised above and would aim to produce, amongst other things, and relevant to the FCA, a full set of industry standards for treatment of businesses in turnaround units in financial institutions.

9. In light of the above, would you support our calls for a full statutory inquiry into the business banking sector?

I will place this letter, and any reply, in the public domain.

Yours sincerely,

Kevin Hollinrake MP
Co-Chair of the All-Party Parliamentary Group on Fair Business Banking