

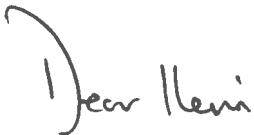
12 Endeavour Square  
London  
E20 1JN

Tel: +44 (0)20 7066 1000  
Fax: +44 (0)20 7066 1099  
www.fca.org.uk

Kevin Hollinrake MP  
House of Commons  
London  
SW1A 0AA

19 November 2018

Our Ref: SA181017A



Thank you for your letter of 17 October 2018 regarding the oral evidence given to the Treasury Select Committee's (TSC) SME lending inquiry by Executives from Clydesdale and Yorkshire Bank Group (CYBG) and the National Australia Bank in 2014.

You note that when questioned by Jesse Norman MP, about whether they would be willing to bring Tailored Business Loans (TBL) within the perimeters of the FCA's review, Ms Crosbie from CYBG replied that *'if the regulator was keen to do more with us of course we would co-operate with them as we do on all matters'*. You consider that this statement was sufficient for the regulator to act without the product in question being regulated. You also consider that the review exercise the firm conducted was not sufficient.

Your letter references the Approved Persons regime as set out in the FCA Handbook, and requests that the FCA consider an investigation into David Thorburn, the former CEO of Clydesdale, because he was an individual with a Controlled Function and was party to, or had knowledge of, the development of a product and knew about misleading sales practices.

### **The FCA's role**

It may be helpful to explain the FCA's role in relation to TBLs as they sit outside our regulatory remit. TBLs, also known as 'hidden swap loans' or 'fixed-rate loans', are types of commercial loans which, as highlighted by the Government, are not regulated by the FCA and our rules and principles do not apply to their sale. For this reason, the FCA cannot require banks to set up a redress scheme for such products. It is for Parliament to decide whether the FCA's remit should be extended to cover these loans. However, even if our remit were extended, we could not take action retrospectively.

As you know, representatives from the FCA wrote twice to the Treasury regarding our regulatory remit in relation to TBLs on September 2013 and January 2014. In June 2014, our General Counsel, Sean Martin, also wrote to Andrew Tyrie MP, Chair of the Treasury Select Committee (TSC),<sup>1</sup> in response to the Committee's request for the legal opinions used to inform our decision that loans with similar features to interest rate hedging products (IRHPs), such as TBLs, fell outside our regulatory remit. More recently, on 30 January 2018, I wrote to Nicky Morgan MP, the current Chair of the TSC<sup>2</sup>, about the regulatory perimeter and the limits to our powers and

<sup>1</sup> [https://www.parliament.uk/documents/commons-committees/treasury/140626\\_Sean\\_Martin\\_to\\_Andrew\\_Tyrie.pdf](https://www.parliament.uk/documents/commons-committees/treasury/140626_Sean_Martin_to_Andrew_Tyrie.pdf)

<sup>2</sup> <https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/FCA-powers-perimeter-300118.pdf>

redress schemes to benefit SMEs. For ease of reference, copies of the letters are attached and can also be found in the footnotes to this letter.

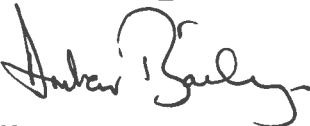
### **Clydesdale's voluntary review of TBLs**

While TBLs are not within our regulatory remit, Clydesdale did undertake a voluntary review and redress remediation exercise on similar terms to the Interest Rate Hedging Products (IHRP) review, including the use of a Skilled Person to ensure the scope, timescales and quality aspects were met. To be clear, the exercise also included the proactive identification and review of cases where product features had similarities to IRHP. Our insistence on the use of a Skilled Person has helped to ensure the integrity of the assessment and remediation processes. The cohort of customers who remain in dispute with Clydesdale is diminishing and the firm is keeping the FCA up-to-date with its progress.

For TBL cases which did not meet the criteria to be part of the voluntary exercise, customers continue to have the opportunity to complain directly to the bank and ultimately the Financial Ombudsman Service if a complaint can't be resolved between the bank and customer. The Financial Ombudsman Service will provide an impartial view of what happened and has the legal power to award compensation up to £150,000. In the event of redress owed over £150,000, they can ask the bank if it would be willing to make a payment above this value but cannot tell them to do so. Customers can also look to take the case to court.

### **Approved Persons Regime**

As noted, TBLs are not regulated and the FCA's powers to take action against firms or individuals in such circumstances, even where the mistreatment of customers has been identified and accepted, are very limited. The Senior Managers Regime (introduced in 2016) means that we now have greater powers to hold senior management of banks to account for the way that they treat their SME customers and the FCA will do that. Further extension to our remit may also assist.

*Yours Sincerely*  


**Andrew Bailey**  
**Chief Executive**