KEVIN HOLLINRAKE MP

HOUSE OF COMMONS

LONDON SW1A 0AA

Tony Boorman
Promontory Financial Group (UK) Limited
2nd Floor
30 Old Broad Street
London EC2N 1HT

16th August 2018

Dear Mr Boorman,

I am writing to you in my capacity as the co-Chair of the All-Party Parliamentary Group (APPG) on Fair Business Banking to ask whether the instances of fraud you described in your evidence session to the Treasury Select Committee were passed to the relevant authorities for investigation. You stated in your evidence session to the Committee on 30th January 2018:

"We identified, I think, two cases where we were concerned that there had been some widespread practice. We identified, I think, two cases where we were concerned that there had been some discussion on the wrong side of the decision point around the potential value for GRG. The facts of those cases are significantly disputed, but they gave us rise for some concern that one could make that allegation in those cases".

We understand that although you did not find evidence that this was general practice within GRG, your investigations did find evidence of a number of instances where businesses were transferred to GRG based on their value to the bank rather than on their level of distress. As we have stated in our recent letter to Andrew Bailey, which is attached, we believe this practice to be fraud under section 4 of the Fraud Act 2006 and we would therefore like it to be investigated by the relevant authorities.

We understand that there are limits on what you can disclose to us as you are subject to the provisions of s348 of the FSMA which make it a criminal offence for you to disclose information obtained under the Act without the consent of RBS and the FCA. However, the APPG would like to know whether the information you obtained when conducting your review in relation to these instances of fraud was passed on to the SFO and/or the NCA? Is it the policy of Promontory to refer cases of fraud to the relevant authorities, where appropriate?

When your s166 report was published, we were pleased to see the 'recommendations for industry' made as they reflect quite accurately the key objectives that the APPG has been pursuing for a few years now. We would also like to take this opportunity to draw your attention to the wider work and objectives of the APPG and I have therefore attached our most recent position statement.

I understand your legal position with regard to the s166. However, we would still welcome the opportunity to discuss with you the wider industry recommendations, should you feel it possible to do so.

Kind regards,

Kevin Hollinrake

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

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APPG on Fair Business Banking

Position Statement 24.07.2018

Next Steps for the APPG

ACCESS TO JUSTICE

Following the launch of our report into dispute resolution for businesses on 11 July 2018, we must again emphasise our position on the importance of having an appropriate redress ecosystem for businesses.

We recognise that our report, undertaken by the Centre for Policy Studies, is one of a number of pieces of research currently ongoing that are investigating dispute resolution for businesses. The UK Finance review, independently led by Simon Walker, as well as the Treasury Select Committee *SME Finance* inquiry, will both produce important recommendations that must be noted by the FCA and the Treasury. We also look forward to the release of the FCA's report on the consultation into the extension of the FOS.

We do not view these pieces of work as being in competition with our own. In fact, we recognise that the proposals outlined in our report are not positioned as a standalone solution, but that the tribunal system recommended in the report should be a central policy objective of the FCA and the Treasury in creating a sustainable system for dispute resolution. The establishment of a financial services tribunal is a key backstop for businesses, ensuring that should a complaint fall outside of the formal remit or expertise of the Financial Ombudsman Service (FOS), or, indeed, any other proposed private system, there is an accessible mechanism in addition to the courts that is open for complaints. In any system, we will always have those who will wish to operate outside the regulatory perimeter, and it is key that we are able to capture this as part of any holistic solution.

The FCA consultation paper into the extension of the Financial Ombudsman Service recognised that while the extension of the FOS is a means of ensuring access to an ADR mechanism for a larger volume of businesses, a tribunal system is a complementary and equally important part of the equation and would be a primary dispute resolution mechanism.

Furthermore, in the same paper, the FCA outlined various areas that will not be addressed through extending the remit of the FOS and that the FCA as a body do not have the power to address. For instance, Andrew Bailey stated in his oral evidence session to the Treasury

Select Committee on 13th June 2018 that the limits of the regulatory perimeter are 'depressing' in that this restricted scope has had implications on the investigation of key issues such as the RBS Global Restructuring Group (GRG) scandal.

The fact that commercial lending falls outside of the perimeter of the FCA's regulatory powers is clearly an unsatisfactory position for the regulator. Andrew Bailey said in the aforementioned Treasury Select Committee session that the FCA is looking into ways to hook up 'robust industry standards and codes' to the Senior Managers Regime which is itself a whole-firm regime without perimeter restrictions.

The APPG remains concerned that the SMCR does not give the FCA adequate powers to effectively deal with issues of misconduct in commercial lending, nor does it give the FCA the ability to directly impose compensation schemes onto firms in cases of commercial lending.

WIDER RECCOMENDATIONS FOR INDUSTRY

The Section 166 report into *RBS' mistreatment of its SME customers* outlined a number of clear industry recommendations for financial institutions and regulators. These are all points that the APPG has been making for many years now, and we encourage industry, the FCA and parliament to take the necessary steps to address these concerns.

In particular, the S166 report stated:

1. 'We believe that policies and practices for the SME sector need to be based at least in part on an appreciation of differing customer capabilities, if the SME customer is to be treated fairly'.
2. 'Contracts with SMEs for the provision of credit facilities and other services can be markedly more complex than their retail market equivalents.'
3. 'A concern raised by many SME customers in our sample related to the absence of any serious consideration of their complaints. The bank had no regulatory obligations to handle complaints promptly, to investigate them fairly or to consider the root causes of such complaints'.
4. 'At present there are no generally recognised professional standards for turnaround or restructuring units in the UK'. Various guides and codes exist which are seen as relevant such as the Institute for Turnaround's *Statement of Principles for the UK 'Business Support Units' of Banks*. Whilst these 'have been endorsed by several banks... there is little transparency about what banks have done to ensure they meet the principles, and it seems no independent monitoring of compliance with the principles'.
5. 'We encourage the industry and customer groups to develop a code on how banks can best support customers in need of business support. Such a code should be subject to independent oversight and monitoring'.
6. 'We suggest that banks should review how they interact with third-party providers, especially in relation to secondees'.

These comments represent the nature of the treatment of SMEs by the whole financial services industry, not simply the actions of RBS' GRG unit.

We acknowledge that the recommendation to increase access to the Financial Ombudsman Service have been taken forward by the FCA, but it is clear that there a many more areas where work is needed. We also acknowledge and welcome the work by UK Finance in working on internal dispute resolution processes. **We do think that the FCA and parliament need to look at the supervisory requirements for internal dispute resolution processes in line with point 3 above.** RBS's recent announcement outlining their intentions to close their GRG compensation scheme demonstrates the lack of confidence and trust that SME customers have in the effectiveness of internal dispute resolution processes, which can be withdrawn at any moment by financial services institutions.

The APPG on Fair Business Banking is also addressing the significant points made about imbalanced contracts through our Contracts Working Group, led by Momentous Change Ltd in conjunction with UK Finance, Lending Standards Board, Chartered Banker Institute, Federation of Small Businesses and SME Alliance, and **this work will focus on point 2 above.**

The Financial Services Consumer Panel has addressed **point 1,** and we have addressed this point in our report. The report states:

"The Financial Services Consumer Panel has called on the FCA to carry out a segmentation of SMEs, similar to that which it has developed for individual consumers. They should explore the differences between businesses of different sizes, and whether there are specific issues relating to different ways of conducting businesses...decisions on whether a firm is sophisticated cannot be made solely on the basis of figures for turnover or number of employees since it will depend on the type of business...a study which uses both quantitative and qualitative ways of deciding whether a business is sophisticated or not may well be the best way forward"

The other issues identified need to be taken in turn and form a key part of the APPGs work moving forward.

CONFLICT OF INTEREST AND THE ROLE OF PROFESSIONAL ADVISORS

The S166 report refers to key concerns of businesses as to the exact nature of the relationship between financial institutions and professional advisers such as surveyors, insolvency practitioners, lawyers and accountants. The conflicts of interest within these relationships are alarming and can lead to at least a substandard treatment of a businesses if not worse if not appropriately managed. Our experience clearly leads us to believe that adequate controls are not in place and this has led to financial loss and insolvency of viable businesses.

It is our view that conflicts of interest are too often entrenched within the insolvency framework, and the APPG will be turning to the complex, often overlapping self-regulatory structures of the professions of insolvency, LPA receivership, accountancy and valuations.

Without the cooperation of the aforementioned, the conduct scandals of the last decade could not have happened, and these industries must take responsibility for their members. We will be encouraging regulatory bodies to engage with the APPG, and we will also be focusing on the investigation of financial fraud by the NCA, the SFO and the police, as we must send a clear message to **all** industries that their members will face regulatory and/or criminal action when they step outside the lines of good conduct and/or abuse their position to the detriment of others.

TURNAROUND UNITS AND TREATMENT OF BUSINESSES IN FINANCIAL DISTRESS

We believe that businesses are currently not being treated in a consistent manner when they are in financial distress. **Point 4** above states that there are not recognised professional standards for turnaround or restructuring units in the UK. Furthermore, **point 5** states that industry and consumer groups need to be encouraged to develop a code on how banks can best support their customers in need of business support, **subject to independent oversight and monitoring.** We concur with this position and believe that a comprehensive review of the treatment of businesses in turnaround units must be undertaken to establish clear, enforceable industry guidelines.

INSOLVENCY REFORM

The government *Review of the Corporate Insolvency Framework* in 2016 recognises and addresses many of the key concerns we have with the insolvency regime, and we believe the more rescue led approach to corporate insolvency would be a significant step forward. We encourage the government to press ahead with these reforms, and look forward to contributing to this discussion.

With regard to potential conflict of interest and abuse of power in the insolvency system, we are concerned that there are too many regulators in the sector, and that an industry that holds so much power is self-regulating. We would encourage scrutiny not only of the regulatory structure, but an in-depth investigation into the way in which insolvency has been used as a safe haven for creditor misconduct. The APPG is concerned about the role that IPs have played—and continue to play—in denying access to justice to businesses in the IRHP redress scheme, HBOS Reading, RBS GRG, Dunbar bank's liquidation of its loan book and the sale of debt to unregulated vulture funds by Clydesdale/Yorkshire Bank, to name just a few.

The APPG is compiling a report for BEIS and the Insolvency Service, and will be focusing its attention here in forensic detail in the coming months.

Taken in conjunction with the need for established industry standards for turnaround units, we believe that a full public inquiry is the most effective method to investigate this complex and cross departmental/cross regulatory ecosystem. The treatment of businesses in turnaround units and insolvency has turned into a festering sore, and series of limited investigations is not sufficient. This is wound that needs to flushed out and investigated properly, so that those who have been denied access to justice have an opportunity to have a voice, and so that confidence can be restored.

THE INVESTIGATION OF FINANCIAL FRAUD

The APPG on Fair Business Banking is also concerned at the perceived unwillingness of the Police, the SFO and the NCA to thoroughly investigate instances of financial fraud which have led to bankruptcies of viable and profitable companies in the UK. The HBOS Reading investigation, which led to the conviction of six people with a combined sentence of 47 years, shows that criminal convictions for financial fraud are possible with the necessary resources and willingness to prosecute and should be seen as an example for future cases of financial fraud. However, we acknowledge that this was a complex and costly process that most individual forces cannot afford, and that we must look at the resourcing of investigation into complex mid-tier financial fraud.

We are concerned that we are not aware of any extensive interviews with the alleged victims of financial fraud. Until such time as we see clear evidence of a thorough investigation, we will continue to publicly press for both individuals and institutions to be investigated, and individual forces to investigate allegations.

We therefore support Anthony Stansfeld, the Police and Crime Commissioner for the Thames Valley, who called for more resources to combat financial fraud. We cannot simply rely on individual victims of financial fraud and the willingness of officials such as Mr Stansfield to raise attention to and investigate instances of financial fraud. Investigations must be financed properly, undertaken by individuals with the necessary knowledge of complex frauds and must be carried out thoroughly. Only then can we hold those who have committed fraud to account and to increase the confidence of business owners that cases of fraud will be investigated thoroughly so they can obtain a fair outcome.

Contact Details

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About the APPG

An All Party Parliamentary Group (APPG) is an interest group that occupies a strategic and effective position within Parliament. It is cross-party, with a minimum number of parliamentarians from the Government and the official opposition, and cross-house, made up of both peers and MPs. The APPG on Fair Business Banking is a platform through which businesses, professionals and trade bodies can discuss issues regarding commercial banking and its role in the life cycle of a business, and through which parliamentarians can access information on banking, finance and related issues, including business rescue and insolvency, on behalf of constituents. As a cross-party group, the APPG is an effective vehicle to effect meaningful change via the Parliamentary system. The Group's status is that of an APPG is bound by the rules set out by The Office of the Parliamentary Commissioner for Standards. It does not have charitable status, or official status in the House, nor is it funded by Parliament. It relies wholly on the participation and contribution of parliamentarians, industry members and stakeholders committed to creating a strong platform for business in the UK to thrive. The APPG is co-ordinated and administered via the APPG on Fair Business Banking Secretariat.

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