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Kevin Hollinrake MP  
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Dear Kevin

Thank you for your letter of 9 August in which you pose nine questions of the Financial Conduct Authority (FCA). I have answered those questions in order below.

Before I do so, I would like to address the suggestion that the current regulatory regime is not adequately equipped. It is important to point out that the Senior Managers & Certification Regime (SM&CR) has fundamentally changed accountability and transparency within banking firms. It came into effect for banks from March 2016, although it does not apply retrospectively to conduct that occurred before its implementation. Part of the issue with bringing regulatory action before the implementation of the SM&CR was that the regime was built around culpability, or direct involvement, making it prone to miss senior people who might not have been directly culpable but should have been accountable. The SM&CR allows us to rectify this by placing an obligation on firms that every individual who holds a Senior Management Function have a Statement of Responsibilities that clearly sets out their accountabilities and responsibilities. There are also specific responsibilities set out in our rules that a firm must allocate to a Senior Manager. The introduction of the SM&CR marks an important shift in the way we are able to hold individuals and firms to account.

In addition, we are able to hold firms to account over the way that they handle allegations of past misconduct, for example through redress schemes

#### **RBS/GRG Phase 2**

On the Royal Bank of Scotland's Global Restructuring Group (RBS GRG) you ask the FCA to:

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.

Given the seriousness of the issues identified by the Skilled Person, we decided that it was more appropriate for the FCA to undertake further work itself, including conducting a focused investigation. This approach meant we have been able to use the FCA's statutory powers to gather information (for example through compelled interviews with GRG senior management), rather than relying on RBS' general obligation to co-operate with its regulators under Principle 11.

It also meant that, if we had pursued disciplinary action we could have done so without the delay that would have come from first engaging a Skilled Person. We will publish a more detailed account of our findings, to the extent permitted by the law and after allowing for any 'Maxwellisation' process.

2. Detail why your findings contradict those of the Skilled Person, as detailed in paragraph

We do not consider our findings contradict those of the Skilled Person. In the July Statement we noted that the changes in systems and controls within GRG did not keep pace with what was needed in light of the substantial increase of customers referred to GRG as a consequence of the financial crisis. While the Skilled Person identified the poor treatment of GRG customers, it also found (at paragraph 1.9 of the Skilled Person's report) that:

- RBS did not set out to artificially engineer a position to cause or facilitate the transfer of a customer to GRG;
- The SME customers transferred to GRG were exhibiting clear signs of financial difficulty;
- There was not a widespread practice of identifying customers for transfer for inappropriate reasons, such as their potential value to GRG, rather than their level of distress.

### **Fraud by abuse of position**

In addition, you ask us to:

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?

As mentioned in response to question 2, the Skilled Person found that SME customers transferred to GRG were exhibiting signs of financial difficulty. The police have looked at the case of GRG and found no criminal case to answer.

The FCA has been in contact with a number of law enforcement agencies in England and Scotland with a potential interest in this matter. We have provided those agencies with the information and evidence they have requested, and have made clear that we are available for further discussions in relation to RBS GRG at any time.

### **The wider regulatory environment**

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.

In principle, we see a role for both the Financial Ombudsman Service and a tribunal for resolving financial services disputes as they meet different needs. For example, the Ombudsman provides a quick and informal process for relatively low value financial services disputes. A tribunal, on the other hand, could provide a more formal, court-like approach for higher value disputes, or disputes involving complainants above the Ombudsman's eligibility thresholds.



We have proposed raising these thresholds so that more businesses have access to the Ombudsman. A tribunal could also meet the demand of some complainants to have their 'day in court'. While the Ombudsman can hold oral hearings, it does not generally do so. The Ombudsman does not have the power to compel the attendance of witnesses, take evidence on oath or test evidence by cross-examination.

Subject to knowing the specifics of the design, governance and operation of such a body, particularly its relationship to the FCA's regulatory regime and other dispute resolution mechanisms, such as the Ombudsman, we support the establishment of a financial services tribunal. However, as we have said on several occasions, such changes would require primary legislation and are therefore a matter for the Government, rather than the FCA.

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?

Section 138D of FSMA gives private persons who suffer a loss because of an authorised firm's breach of an FCA rule the right to bring a civil claim against that firm.

Section 138D relates to a customer's civil right of action against a firm, not the enforcement powers of the FCA. Legislative change would be required to extend the civil right of action under section 138D to businesses.

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?

Yes, in respect of those consumers specified in any such amendment to the Order. However, any change to the regulatory perimeter would need to balance, on the one hand, increased protections for business customers and, on the other, potential adverse implications for SMEs, such as the terms of access to and cost of credit.

Our perimeter is ultimately a matter for Parliament. We would be happy to contribute to discussions, but our priority for now is to give the SM&CR time to bed in and demonstrate its effectiveness.

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?

It is difficult to set out precisely under what circumstances we would have reasonable prospects of success for holding individuals to account as this will depend on the circumstances and facts of each case. However, under the SM&CR, almost every individual who works in financial services will also be subject to Individual Conduct Rules. Furthermore, in banking firms, the scope of these Conduct Rules applies to the conduct of individuals whether they are carrying on regulated or unregulated activities. Where we uncover misconduct, the scope of the Conduct Rules gives us a broader remit to take regulatory action going forward. As we mentioned, the SM&CR has applied to banking firms from March 2016, and is being rolled out to insurers and solo regulated firms over the next two years. While it will take some time before its benefit is felt, it nevertheless marks an important and decisive shift in the right direction in tackling conduct issues.

**Public inquiry**

Finally, you ask whether the FCA would support the APPG's 'calls for a full statutory inquiry into the business banking sector'.

I can understand the desire of small businesses who feel that they've been let down by the banks, and the current legal and regulatory system, to have something akin to a 'day in court'. Ultimately however, whether or not to commit to a public inquiry would be a decision for Government and Parliament.

I hope that this response is helpful.

Yours Sincerely  
*Andrew Bailey*

**Andrew Bailey**  
Chief Executive