Statement from the All-Party Parliamentary Group on Fair Business Banking

Letter from Kevin Hollinrake MP to Chief Executive of the FCA, Nikhil Rathi – 27/01/2021

Subject: Formal Complaint about Lloyds Banking Group under the provisions of the Senior Managers and Certification Regime (SMCR)

Dear Nikhil,

Thank you for Sheldon Mills' 20th January 2020 response to my letter to you. These matters may seem like points of detail that can be delegated, but I could not disagree more and would appreciate a personal response to my concerns as they relate to the culture of the FCA and the fundamentals of how it regulates the sector.

Protection of consumers, businesses and the reputation of the UK's flagship financial services sector requires the FCA to regulate without fear or favour, yet its reputation amongst the public, the press and parliamentarians stands at an all-time low. Dame Elizabeth Gloster's damning investigation into the FCA's supervision of London Capital & Finance says much about its lack of proactivity and inquiry. The attempt by senior leaders within the FCA to anonymise the criticism are evidence of a continued reluctance to hold individuals to account within banks or within its own ranks. There are a number of other examples of how the FCA has apparently avoided the opportunity to hold individuals to account, including not being able to make any "findings about misconduct" amongst the senior management team responsible for RBS/GRG, the UK's biggest ever banking scandal and the matters that we highlight below.

In the past, the FCA has taken a 'lessons learned' approach to regulation, resolving matters using the sticking plaster approach of apologies and compensation for victims rather than fixing the problem at source by using its powers to name, shame and sanction those responsible. As an example of how holding individuals to account can reduce malpractice can be found in the introduction of legal liability of individual board members for health and safety failures which has seen the fatal injury rate in the construction sector reduce by 75% over the last 40 years. Taking a similar approach for failures to properly manage regulatory and conduct issues with board members in the financial services sector would, in our view, have a similar effect.

As Emerson once said, "an institution is the lengthened shadow of one man", as such we hope you will welcome the opportunity that new leadership of your organisation brings and hope that the FCA will now adopt a much-needed new approach to the vital task of robust enforcement of the rules that govern our financial services sector. You have a clear opportunity to hold individuals to account and we would strongly welcome any evidence of signs that you are willing to do so.

Further the Sheldon's responses, I would be grateful if you could answer in detail the following points and questions:

1. In relation to Sally Masterton, our allegations are not only that LBG should be held to account for her mistreatment, but that the FCA are in breach of their statutory duty to hold their senior managers responsible for that mistreatment and for failing to observe its own rules and protections for whistleblowers. Inexplicably, Sheldon Mills seems to defend LBG stating that “allegations relate to events that occurred before the SMCR came into force”, but this is not the case. The SMCR rules came into force in March 2016 yet:
    a. At LBG’s AGM on 24th May 2018 the Chairman repeatedly perpetuated the false statement that Ms Masterton had written her report of her own volition. A statement it later recanted.
    b. According to Andrew Bailey’s own testimony to the Treasury Select Committee, he personally had to intervene in the case in 2018 resulting in an apology and compensation from LBG in November 2018.

It is patently clear, therefore, that Ms Masterton was mistreated for a 30-month period during which the SMCR was in effect.

- Please can you confirm that these serious allegations of concealment of fraud and breaches of employment and whistleblower regulations are being investigated by the FCA and that senior managers will be held to account for any significant findings of wrongdoing?
- As Chief Executive of the FCA, Andrew Bailey in correspondence refused on numerous occasions to answer my simple question about whether the FCA had followed correct protocols regarding Sally Masterton. Please could you also confirm that there is an internal investigation into whether the FCA did follow its own whistleblower policies?

2. On 25th September 2019 at a meeting with Andrew Bailey, representatives of SME Alliance drew Mr Bailey's attention to serious inconsistencies and misrepresentations in the June 2019 FCA Section 168 Final Notice re HBOS Reading. Aside from the fact the S168 was narrowed to solely considering breaches of Principle 11 of the FCA Principles for Business on the grounds of regulatory perimeter commercial lending there are serious questions to be asked as to why the start date of the "Relevant Period" at paragraph 1.1 of the Notice, is 3rd May 2007.

   On 2nd March 2010, the FSA in a 'brief' to the TSC advised they had been notified by the Bank of ‘a control issue’ in ‘early 2007’ at HBOS Reading.

   The Turnbull Report and Reading trial transcripts reveal the Bank were aware of serious irregularities from at least January 2007 if not November 2006 and that the "control issue" was actually reported to the FSA on 5th March 2007. On 26th March 2007, a director of a company banking with HBOS Reading reported £11m of suspected money laundering to the Bank.

   Under the FSA 'Sup 15.3.1-15.3.7-15.3.8(2) Rules' a control issue must be reported to the regulator ‘immediately’. Despite a wealth of well documented irregularities from January 2007, the ‘Relevant Period’ in the FCA Final Notice commences on 3rd May 2007.

   The above are clear examples of the inconsistencies and misrepresentations which are evidenced throughout the Final Notice and a seeming unwillingness to undertake a robust investigation where clear evidence of wrongdoing exists.

- Are you comfortable that the previous investigation has properly considered events, regulatory breaches and potential wrongdoings prior to 3rd May 2007?
- Do you believe that the £19.5 million discount the FCA offered the Bank from the £66 million fine was appropriate when it had been clearly found guilty of failing to be "open and cooperative with the Authority and failed to disclose information appropriately"?

3. Despite ten years of LBG denials that any fraud had taken place and the disgraced implementation of the flawed compensation scheme, described by the FCA as "including failures to adequately assess claims for direct and consequential losses, the exclusion of some customers from the review and inconsistency in the way some customers were treated in respect of claims for distress and inconvenience.", the FCA is not undertaking its own investigation of LBG but seems happy for it to commission its own investigation into events.

    - We make no criticism of Dame Linda Dobbs, but why is the FCA happy to allow Lloyds to commission their own review into the circumstances?

4. Sheldon states that "it has taken too long" for victims to receive fair and reasonable offers of compensation. These are not simply inadvertent delays as is implied, but are exclusively as a result of a deliberate strategy by LBG to avoid and minimise payments to victims. It is true as you say that "Sir Ross' review was instigated by the FCA", but this happened following long-standing complaints and outcries from the victims, the media, the APPG and the SME Alliance including a number of debates and questions in Parliament. These same bodies have raised significant, legitimate concerns about the new scheme relating to a bank you regulate that has a track record of deceit and denial in these matters, which you seem to treat lightly and dismiss relying only on "discussions with LBG". Our experience is that LBG's interpretation of Cranston is, at best, narrow compliance, which means that sensible cases and concerns are being ignored.

    - Are you seriously again intending not to act on these concerns until you are compelled to do so?
    - Both the SME Alliance and the APPG have brought you cases and feedback, yet all you ask for are more cases, and we are concerned you have yet to take steps to resolve these issues. What steps have you taken to verify the responses LBG gives you in your discussions with it?
    - As we have previously stated, we recommend that any final decisions on the matters we raised should be open to appeal to Rory Philips QC. This would settle the issues of hardship payments, debt relief and final eligibility for the review, and would provide the assurances required. Has the FCA had 'discussions' with Lloyds on this and what was the outcome?

5. Whilst you say that you have already investigated Bank of Scotland's failure to be open and co-operative with the FSA in relation to suspicions of fraud at its Reading branch, that investigation was limited to the period up to January 2009. There is extensive evidence that LBG failed to be open and co-operative after this date. In April 2017, the FCA announced that "it is investigating events surrounding the discovery of misconduct within the Reading-based Impaired Assets team of Halifax Bank of Scotland (HBOS)" during the period following the takeover of HBOS in 2009.

    - Please can you confirm when this investigation is likely to conclude?

- Please can you confirm that the report will be published in full and that those responsible for any wrongdoing will be named in the report?

6. Your final paragraph overlooks two fundamental issues. First, that Sir Ross himself has acknowledged that his intentions concerning waivers have not been addressed which is why he repeatedly pursued LBG to let him do so. He also asked to be allowed to address the manifest error in his subsequent Re-Review Panel Recommendations, which is the founding document on which the Foskett Panel is based. His concerns by themselves should be cause for serious concern; but are bright red warning lights when coupled with LBG's repeated refusals and suppression of his efforts. Secondly, it is axiomatic that before the Foskett Panel can determine any victim's financial settlement, that victim first has to be accepted into the Re-Review.

    - What is the basis for your belief that the use of waivers is in line with Sir Ross' intentions despite his own actions and efforts to address them?
    - How can the Foskett Panel determine any financial settlement for people who, despite Sir Ross' intentions, are technically or practically excluded because LBG has undermined Sir Ross's intentions?

I look forward to hearing from you.

Kind regards,

Kevin Hollinrake MP
Co-chair of the APPG on Fair Business Banking