FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

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

Sent by email

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Our Ref: SA210112A

Dear Kevin,

Thank you for your email of 27 January to Nikhil Rathi on the matters we have previously discussed both in person and via correspondence in recent weeks.

As our Executive Director for Consumers and Competition, I am best placed to respond to your points, which I've addressed below, following the numbering order in your email and grouping them together where appropriate.

In your email, you expressed your view that we are not doing enough to hold to account individuals involved in misconduct in the GRG case. As you know, we published a report into our findings in relation to GRG which concerned commercial lending, having fully investigated whether deficiencies in GRG's business reflected any lack of fitness and propriety of senior managers of that business.

The FCA's findings and reasons for not taking further action were set out in the published report. Importantly, the report dealt with matters that are not regulated and which predate the work of the Lending Standards Board and the Senior Managers & Certification Regime.

As a public authority, the FCA is required to act reasonably, which in this case means public interest may trigger an investigation, but an enforcement case must be premised on both public interest and jurisdictional and evidential sufficiency.

I will now turn to the specific points you made in your email.

Point 1 – Ms Masterton

You refer to allegations regarding Lloyds Banking Group's (LBG) treatment of Ms Masterton when she came forward as a whistleblower, as well as the FCA's handling of Ms Masterton's allegations. As you know, we operate a policy of not announcing or confirming investigations unless there are exceptional circumstances, so I remain unable to comment further on her case other than to say we continue to take her allegations extremely seriously. Similarly, we are limited in what we can say regarding our engagement with whistleblowers.

However, I am happy to clarify a point in my 20 January 2021 letter on the subject of the Senior Managers Regime (SMR). My reference to the SMR was in the context of our action against Bank of Scotland (BOS), in which we imposed a £45.5m penalty on BOS for failures to disclose information about its suspicions that fraud may have occurred at the Reading-based Impaired Assets team of Halifax Bank of Scotland (HBOS), not to how LBG treated Ms Masterton as a whistleblower.

You also ask us for information relating to our engagement with Ms Masterton. While I appreciate that it will be frustrating, our position remains that we cannot discuss this with you unless you have been appointed as a representative with her consent.

Points 3 and 4 - The Dobbs review, LBG and the treatment of victims of HBOS Reading

You raise concerns over the Dobbs review. I cannot comment beyond what I have already set out in this and previous correspondence, other than to say that the review itself is independent, and we await its findings with interest.

Separate to Dame Linda's work, you reiterate that you have concerns over LBG's treatment of victims since the Cranston review. I would again request that if you are witnessing specific cases which evidence your conviction that the bank is ignoring 'sensible cases and concerns', that you pass these onto me as soon as you are able to, with specific details and if possible, correspondence between the firm and the consumer in question.

Point 2 – Principle 11 breach

Your email further asks why we concluded that BOS's contravention of Principle 11 commenced in May 2007. A breach of Principle 11 arises when senior management at a firm becomes aware that there is a significant issue that should be reported to the FCA and they fail to report it. This occurred on 3 May 2007 when a senior manager recorded a suspicion of fraudulent activity in an internal firm briefing note. As we explain in the Final Notice[1], BOS initiated a review of Mr Scourfield's portfolio at the end of 2006, which continued until August 2007. While customers of the Reading-based Impaired Assets team submitted complaints to BOS before May 2007 there was no evidence that they were escalated to senior management within the BOS Corporate Division or HBOS Group at the time.

Our investigation was robust and considered material described in the Turnbull Report, evidence in the Reading trial and other sources. Our findings are based on facts that we can prove.

The penalty took into account all matters relevant to the firm's misconduct including the matters you have mentioned. The reduction, however, was a result of its 'early plea' of guilty which is part of our penalty policy and encourages firms and individuals to agree to resolve cases rather than contest them through litigation.

An early resolution of cases is in the public interest and saves valuable time and resources for other matters. Our policy, which has existed for many years, provides that the amount of the financial penalty otherwise payable will be reduced to reflect the stage at which the firm agrees with the FCA's findings. This is done openly and transparently and is entirely in line with other penalty regimes administered by other agencies including the criminal justice system.

Point 5 – investigation into BOS

In your email, you refer to an FCA press release issued in April 2017, which stated that we were resuming an investigation. That investigation has concluded and resulted in us taking enforcement action against BOS in June 2019, including a £45.5m fine (as mentioned above) and the banning of four individuals from working in financial services[2].

Point 6 – compensation scheme for victims

Finally, your email also raises issues with the compensation scheme for victims of the HBOS Reading fraud. As we have previously set out, the Cranston Review was instigated by the FCA and our focus is in ensuring that LBG fully carries out Sir Ross' recommendations and not

[1] https://www.fca.org.uk/publication/final-notices/bank-of-scotland-2019.pdf
[2] https://www.fca.org.uk/news/press-releases/fca-fines-bank-scotland-failing-report-suspicions-fraud

revisiting his findings. As mentioned above, I would be grateful to receive specific examples where the APPG consider that LBG has failed in this regard.

Although you have previously provided us with anonymous customer feedback, as mentioned above we would ask you to provide specific examples where the APPG considers that LBG has behaved unreasonably when considering customer requests for support. We will carefully consider any such concerns once shared with us.

As set out in previous correspondence, Sir Ross' intention was that the Customer Re-Review findings should be final providing closure for HBOS Reading fraud victims. The Re-Review should not become a stepping-stone towards eventual litigation, with Sir Ross setting out that customers should be required to sign a "suitably drafted opt-in" agreement[3]. LBG's use of customer agreements, which limit customers' future legal actions only with regard to matters considered by the Re-Review, appear to be in line with Sir Ross' intention.

I hope that this is helpful.

Yours sincerely

Sheldon Mills
Executive Director, Consumers and Competition

[3] Cranston Re-Review Panel Recommendations, Section 13, paragraph 89