

Mr Nicholas Gould and Mrs Nikki Turner
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Dear Nicholas Gould and Nikki Turner

Thank you for your letter which I received on 14th May. You raise a number of very important points to which I have responded below.

First of all, can I emphasise that if, as you indicate, you have evidence on current cases of misconduct in the treatment of SMEs by firms authorised by the FCA, can you please provide it to us as soon as possible. I would be happy to discuss how best to do this. Can I also add that the regulatory situation is different today from the past in one important respect, namely that the conduct rules for the Senior Managers and Certification Regime apply to all activities conducted by bank employees including those with SMEs, whether or not the activities fall within the scope of so-called "regulated activities". This gives the FCA more powers, and we will use those powers where possible. Please do provide us with the information.

Before turning to the specific firm issues that you raised, can I respond to the points you made on the Financial Ombudsman (FOS). First, the issues raised in the recent Dispatches programme are subject to an independent investigation commissioned by the FOS Board. Like you, I await the findings of that investigation. You raised the issue of our proposal to extend the role of FOS to cover relevant SME activity more broadly than the current limited scope. Can I start by rejecting what was said at the recent Treasury Select Committee hearing, namely that I took up the FOS proposals as a means to head off the introduction of a Tribunal. On the contrary, I am on the record more than once, including to the TSC, that I support the introduction of a Tribunal, but that since it requires legislation, and is therefore beyond the powers of the FCA to introduce, in the absence of such legislation, the FCA has taken the initiative that it can take by proposing the role for the FOS. In fact, I would support the introduction of both a Tribunal and the extension of the FOS because they represent different but complementary approaches. But in the absence of legislation, I think we should get the FOS extension in place. Finally on FOS, I have also been clear that such an extension of the role of FOS would require a major change of approach and new skills. I believe this can be done, but I am in no doubt that it is a major task.

Let me move onto RBS GRG. Can I start by making it absolutely clear that the FCA agrees with the substance of the S166 report. There should be no doubt about this.

It has been suggested that our summaries in some way concealed or watered down the content of the report. The summaries differ in length but are similar in style and tone. I would note that for the second extended summary, the TSC commissioned an independent review by Andrew Green QC to determine if the summary was true to the main report in substance and tone. His findings have been published by the TSC, which are that we were fair on both counts. The issue we had with the S166 Report was nothing to do with its contents, but whether we had the legal authority to publish it without the consent of relevant individuals and the firm. We had extensive legal advice that we could not do so. As you know, that issue was resolved by us providing the report to the TSC on its requirement for us to do so.

You asked about our further work on GRG. As we have made clear, we are conducting further investigations in the form of focussed review work. It has been suggested that this was established by the FCA to avoid any further scrutiny by a third party. I have made clear that on the contrary, only we have the powers under legislation to conduct an investigation which could lead to enforcement action, and likewise as part of this process only we have the powers to require the production of evidence. I would however note a point that has been made before, namely that GRG was conducting activity outside the perimeter of our regulation and we cannot apply the Senior Managers Regime retrospectively.

As you know, RBS has established a compensation scheme, with independent oversight from Sir William Blackburne. If you have concerns about the operation of the scheme, I would encourage you to be in touch with Sir William. I welcome the recent announcement by RBS that independent oversight will be extended to the consequential loss element of the scheme. Finally, I am aware that there has been much commentary on the adequacy of RBS's estimate on the cost of the scheme at £400mn. It is important to recognise that this is not a cap; rather, it is no more than their estimate, and the final cost will be whatever is determined by operating the scheme.

Last, let me turn to HBOS. First, we work closely with the Police, and have done so throughout the investigation. This co-operation continues. Our own work on Reading was paused for a number of years at the request of the Thames Valley Police, but resumed once their case was completed. As you know, we are investigating the extent and nature of the knowledge within HBOS in relation to HBOS Reading and its communications with the FSA, while Dame Linda Dobbs is assessing whether information relating to HBOS Reading which Lloyds knew or should have known about, was properly investigated and appropriately reported to the authorities. We will obviously take into account the work of the Dobbs Review. Finally, I would also note that in the context of the Review into the failure of HBOS by the FCA and PRA, all relevant material concerning auditing was provided to the Financial Reporting Council.

I hope this helps to make clear what we are doing. I would be happy to meet to discuss these issues further. Consistent with your approach, I have placed this letter in the public domain.

Yours Sincerely
Andrew Bailey.

Andrew Bailey
Chief Executive



Andrew Bailey, CEO
The Financial Conduct Authority
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7th May 2018

Dear Mr Bailey,

At a time when more and more bank misconduct is being exposed in the public arena and when more than ten years since the HBOS Reading fraud was first uncovered, we saw bankers jailed, more and more people are naturally becoming concerned about the role of the regulators and what they will do or are doing following the most recent revelations. In particular, many of our members would like to know what action the FCA (and the FOS) will take for the numerous, serious breaches - possibly criminal - of regulations by the GRG division of RBS now the section 166 report into that conduct is readily available to the public?

Please don't think this letter is about allegations and grand standing, that is not the point at all. It is far more important than that. Our members are genuinely concerned that, in many cases, the regulators are giving the impression of working to protect the banks and conceal the misconduct of certain directors, senior executives and others. Such a scenario, as we suggested in our letter to you in August 2017, can only result in serious miscarriages of justice because, for example, the judiciary may have been misled about the conduct of RBS/GRG. If nothing is done now to penalise and curtail such conduct, then the judiciary will still be in the dark and the same miscarriages of justice will continue to occur.

We would like to be able to say that, in the last year we have seen the situation between SMEs and the major banks improving. Unfortunately, the opposite is true. We are seeing cases coming in huge waves. Frequently we get a spate of cases coming in from a specific bank (and this is not just limited to RBS or Lloyds) over short periods. Unannounced drive-by valuations crippling clients' loan to value, instant removal of overdrafts, removal of loans with no explanations, the immediate instruction of LPA Receivers, calling in of personal guarantees on directors' homes because regulated mortgages are subsumed by unregulated commercial guarantees – these are just a few of the issues that are devastating and destroying our members and of course many more of whom we have no knowledge, on a daily basis and at a time when we are led to believe banks are somehow being made to behave.

We would ask you to consider the following four points and give us your comments for us to pass on to members. It may be that lack of transparency possibly due to Section 348 of FSMA 2000, means you are doing more to remedy the situation of how banks treat SMEs than the public know. Therefore, we would ask for as much transparency as you can give and which may help members understand your intentions and policies going forward. With the limited knowledge we have of what is happening in the regulatory arena, it does seem the regulators are continuing to protect banks rather than regulate them. We are naturally concerned.

Our members biggest concerns are:

1. If a damning report like the section 166 report on GRG can come out, expose horrendous misconduct by a bank which has still, for the most part not compensated its victims, and is still majority state owned, and if the regulator takes no action, how can SMEs regain trust in the RBS or in the regulator? A near universal and common sense view, suggests that senior

executives in RBS must have sanctioned what happened in GRG and one of them has gone on to be a very senior executive at Santander – which means he is still a regulated person. Are we to believe no one is going to be held to account for such appalling misconduct and is the FCA going to ignore the content of the report? If so, what is the point of the regulator or the report?

2. We are aware commercial lending is an unregulated activity, but all banks are, nevertheless, supposed to comply with the FCA Principles. Deliberately destabilising businesses in order to misappropriate their assets is not acting with integrity. Neither is it treating customers fairly and reasonably and in some extreme cases, and like the Reading case, it almost certainly includes criminal conduct – and yet nothing appears to be happening to either stop such conduct or to make amends to those who were so severely affected. The GRG compensation scheme is far from effective and it is certainly not generous. The Bank may believe it is fair to expect people to rebuild their lives on minimal recompense with 8% for consequential losses but the reality is very different.

It would seem the 'get out of jail free' card for both banks and regulators is to rely on the fact so many transactions are unregulated. Therefore, so our members are absolutely clear on what they can and can't expect from the FCA, please clarify whether the regulator has any power or obligation at all over misconduct or even potentially criminal misconduct related to commercial lending. If not is it the case that no one should expect the FCA to take any action over banking divisions such as GRG?

3. It took over 10 years for the HBOS Reading fraud finally to see the bankers involved and their associates jailed. Without many of the so called 'professionals' (as was noted in the House of commons debate forming part of the "web of deceit"), who support the banking system even when it acts inappropriately, neither HBOS Reading nor GRG could have survived, let alone thrived for so long. It is impossible that SME Alliance and the many victims of both banks can know so much about the 'supporting cast' of Insolvency Practitioners, accountants, auditors, surveyors, estate agents, lawyers and advisers and their blatant misconduct, while the FCA apparently knows nothing and does nothing to report such misconduct to those authorities that can do something – such as the police. Why should anyone trust the regulator while it seems to turn a blind eye to such collaboration? Or are we wrong such that you can re-assure us the FCA is taking action?
4. There has been talk recently and it was even suggested by the FCA, that the Financial Ombudsman Service (FOS) should be given more powers to deal with SME complaints. Many SMEs who feel and have historically felt completely let down by the FOS will have seen the 'Dispatches' programme broadcast on Monday 13th March, about the totally inadequate service supplied by the FOS. What was very apparent by that programme was how little adjudicators understand about the consequences of their often ill-considered decisions. A wrong decision can plunge a business owner and their family into abject poverty and in some cases, this has been proven to lead to extreme physical and mental health issues and even suicide. The explanation given by a FOS employee in the Dispatches programme that, when in doubt, it is easier to find against a client than to find against a bank, is totally unacceptable and must surely call into question many of the decisions made going back years. Clearly much of this is caused because the adjudicators and sometimes even the ombudsmen, have little or no understanding of the complex financial products/issues they are dealing with. With respect, we would suggest a quick look on google to gain some understanding of financial products, is totally inappropriate. How can we have people with little or no training or experience making what are often life altering decisions about

businesses owners, their staff, shareholders and even their creditors? The whole system is cavalier at best and a sham at worst. Why should anyone trust the FOS? Does the FCA still suggest they should be given greater powers without radical change to improve its services and ability?

Repeatedly we have heard the question asked - how banks will regain public trust? Our members are concerned that until we can have trust in our regulators, we will never be able to regain trust in our banks because surely, until misconduct in the financial sector is seriously challenged, those who find it advantageous to exploit SMEs will simply continue to do so. An obvious example of this is how the HBOS Reading fraud was able to cause absolute misery and distress for SME clients for many years and until the culprits were jailed in 2017, even although the bank identified serious irregularities about the conduct of Lynden Scourfield and started its investigations as far back as 2006.

Perhaps there has never been a more damning document (that we the public know of thus far) than the section 166 report into RBS GRG so we would like to know, what action is the FCA going to take against those executives of RBS who oversaw, sanctioned and allowed such despicable policies to operate in a state bailed out bank? A bank which of course is likely to be the subject of a multi-billion dollar fine in the USA in the very near future. The lack of transparent action to date by the FCA suggests the report has come and gone and both the Bank and the regulator just hope the SME Sector and the public will forget about it. Without doubt, those affected are not in a position to forget RBS GRG as they are still living with the consequences and RBS (by no means exclusively) is still, in many cases, persecuting its customers.

We sincerely hope the victims won't have to wait another 10 years for justice as was the case with HBOS Reading. Who, if not the FCA, do you advise SMEs and the public to rely on to make our banking system fair, safe and reasonable? Additionally, to who, given the disappointing performance of the FOS, should SMEs address their concerns and complaints?

We are in the process of collating information our members have made available, so we can compile a report for the FCA, the APPG on Fair Business Banking and the TSC which we hope will give maximum clarity and insight about the horrendous treatment so many SMEs are still receiving. We hope this report, which should be finished by the end of June this year, will prove useful to you and other authorities. In the meantime, any enlightenment you can give on what will happen next regarding the Section 166 GRG report, would be gratefully received.

Finally, may we remind you that the issues raised in this letter are in no way academic. They affected and continue to affect real people with real lives, many of whose lives have been totally and utterly destroyed, through no fault of their own. We thank you in advance for your attention to this letter and look forward to your reply.

Yours sincerely

Nicholas S B Gould (chairman of SME Alliance) and Nikki Turner (director of SME Alliance)