

Annex B

Financial Conduct Authority ("FCA")

Freedom of Information Request – (FOI5015) – Abstract

Board Paper

Date of Meeting : 25 February 2016

Subject : CEO Report

Project Sapphire

The FCA has stated publicly that it expects to publish the outcomes from the review. However, external Counsel has confirmed that the conclusions are likely to be confidential information under FSMA, and that consent of both RBS and the skilled person would be required to publish any confidential information about the review.

Board Paper

Date of Meeting : 17 March 2016

Subject : CEO Report

Project Sapphire

We have stated publicly that we expect to publish the outcomes from the review. However, external Counsel has confirmed that the conclusions are likely to be confidential information under s348 FSMA, and that the consent of both RBS and the skilled person would be required to publish any confidential information about the review.

Board Paper

Date of Meeting : 21 April 2016

Subject : CEO Report

Project Sapphire

The date for publication of our conclusions and findings will depend on a number of variables, which include the extent to which the bank will want to comment, and possible Maxwellisation issues.

HMT statement: The Economic Secretary to the Treasury issued a Written Ministerial Statement and published a letter from us regarding the review's progress on 13 April 2016. This highlighted that we have received the draft findings but that there are a number of further steps required before we publish the outcomes of the review.

EXECUTIVE REGULATORY ISSUES COMMITTEE MINUTES

Wednesday 4 May 2016 10:00 – 12:00

HSI –RBS GRG Skilled Person’s Review

Next steps would then be to give consideration as to how to finalise the review and, in particular, whether to publish the final report. It was noted by the Committee that, in light of legal advice, publication could only proceed with the consent of RBS.

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The Committee noted and discussed the following points including:

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- Publication of s166 reviews was not normal practice and no one present was aware of previous Skilled Person’s reports being published.
- The likely timing of publication of any report and the desirability of having made a decision on, at least, whether an investigation ... should be commenced, by the time of publication.

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In the event that consent was given for publication Maxwellisation may therefore be required. Alternatively the FCA could explore with the Skilled Person whether publishing a redacted report would be appropriate.

The Skilled Person had noted that, in their view, the report was written in a way that meant it could be published.

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The Committee noted that the question of Maxwellisation was an important, and complex, one that the team needed to consider carefully and that the possibility of an Enforcement investigation being commenced ... was a factor to consider in the publication of the report.

Decision: The Committee agreed that discussions would be had with RBS on whether they would consent to the report being published.

ERIC Paper

Subject – RBS GRG Skilled Person’s Review Findings

4 May 2016

(2) Our strategy for publication of the review outcomes: Should we publish the skilled person’s final report in full, for transparency? Alternatives are to: publish our own statement or report on the review outcomes, publish the final report and our own comprehensive statement detailing our views and the next steps, or publish the final

report and invite RBS to announce its response. This will be informed by advice on Maxwellisation, which is not yet final.

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Handling of next steps (including publication)

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Although it is not commonplace to publish skilled person's reports (publicly), the overriding public interest may warrant disclosure, and such disclosure will need to be appropriately agreed and managed.

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Next steps will be:

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- finalise the FCA's conclusions about GRG's treatment of SME customers for possible publication;

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- revert to ERIC for discussion on:

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- publication strategy relating to review outcomes and whether to publish the skilled person's final report.

We aim to return to ERIC for these decisions by late July.

ERIC Main Paper : RBS GRG SKILLED PERSON'S REVIEW FINDINGS

Publication strategy

3.10 The decision on how to announce the review conclusions, particularly whether we publish the skilled person's final report, will attract considerable scrutiny. The options are simple but the risks attached to each option are more complex, and no option is without risk.

3.11 The options are

a. that we publish the report in full, which would increase transparency of the process and minimise any perception that we have tried to fetter the report in some way. This may be accompanied by an FCA statement and/or RBS substantive response;

b. that we publish only our own report on the review outcomes

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3.12 Publication strategy is dependent on two important factors:

a. Consent to publish – We are working on the basis that we will need the consent of RBS to publish the full report. Publishing without their consent would give rise to significant legal risk to the FCA ...

b. We are also exploring Maxwellisation issues and the extent to which we could mitigate them in the event of publishing the report

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4 Risks

4.1 The following risks relate ... in particular the fact that we will come under pressure to publish the full skilled person's report):

- a. ... The way that some of the key conclusions are presented, if published or otherwise disclosed to third parties, may raise expectations among SME customers about the prospect of obtaining significant redress or compensation, which is likely to be restricted to a smaller proportion of customers.
- b. If the FCA were to resist publication of the report, only for it to be later released or leaked, there is a reputational risk that the FCA may be perceived as "whitewashing" the skilled person's findings.
- c. If the report is not made public, there are perception risks around our transparency and the integrity of the review. There is likely to be extensive speculation about the seriousness of the findings and there may be less trust in the bank's proposals

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Board Paper

Date of Meeting : 26 May 2016

Subject : CEO Report

RBS GRG

We are currently considering a number of next steps relating to our publication strategy,
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Next Steps

We are currently considering a number of next steps relating to our publication strategy,
...

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Board Paper

Date of Meeting : 27 July 2016

Subject : CEO Report

Review of RBS Treatment of SME customers within its GRG (Project Sapphire)

The date for publication of our conclusions and findings will depend on a number of variables, including possible Maxwellisation issues. We are aiming to return to ERIC in September 2016 with a number of decisions relating to publication strategy, ...

ERIC Paper

RBS GRG SKILLED PERSON'S REVIEW FINDINGS

19 September 2016

The purpose of this paper is to update ERIC on this work and to seek decisions as follows:

- 1. The FCA should not publish the skilled person's final report.**
- 2. The FCA should publish its own statement about the review outcome. That statement should include reasons for not publishing the skilled person's final report.**

Risk and Compliance Oversight views

R&CO agree with the proposal to not publish the full GRG skilled persons report, but instead to publish the key findings. ... R&CO also notes that it is not normal practice to publish the outcome of S166 skilled persons' reports.

R&CO agree with not publishing the report as the legal risk appears high, and by going through the process of maxwellisation, significant costs and further time delays will inevitably occur. ...

5. Risks and Options

5.1 Options for publication are:

- a. publication of the full final report without Maxwellisation;

- b. publication of the final report after full Maxwellisation;

- c. ...publish the report after maxwellising from the level of X and above; or
- d. producing a redacted version of the final report for publication, or publishing our own statement summarising the review outcome.

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5.4

a. External Counsel's advice led us to the conclusion that publication of the final report would expose the FCA to an unacceptable risk of successful legal action by current/former RBS managers for unfair treatment. ... Putting aside any issues regarding consent required if the report contains information that is confidential for s348 FSMA purposes, the FCA would have to accept a high risk of successful litigation if the report is published without maxwellisation or undertake a lengthy and potentially large scale maxwellisation exercise, which would delay publication of the outcome of the review, and set a precedent for publishing skilled person's reports. ... We considered the option of publishing a redacted version of the report (to remove all references to criticisms of individuals or groups of persons) but, taking into account external Counsel's comments, we have concluded that redaction may simply fuel speculation about the content that had been removed.

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Recommendations

6.1 The skilled person's final report has been written in a way which, based on external Counsel advice, means it could not be published without extensive maxwellisation of individuals at RBS. **The final report should not be published on a proactive basis by the FCA.**

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6.8 In addition, any external communication by the FCA should make clear the reasons why:

- a. we are not publishing the final report (not supporting statutory objectives, need for maxwellisation, confidentiality of the report, risk of market distortion and not common practice);

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EXECUTIVE REGULATORY ISSUES COMMITTEE MINUTES

Monday 19 September 2016 0845 – 10:45

1. HSI Project Sapphire : RBS GRG: Skilled Person's Review Findings

... Having taken advice from external Counsel the recommendation was that the FCA should not publish the report of the SP without extensive Maxwellisation and securing the necessary consents in respect of "confidential information", therefore rendering it unsuitable for rapid publication in its current form.

Points noted and discussed by the Committee included:

- There was a risk of legal action if the report was published without Maxwellisation.
- Maxwellisation would be lengthy and likely delay publication of the report, as well as fuel speculation on the nature of the redacted contents.

- There was no existing precedent where a third party, rather than the FCA, had published the report of the SP.

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- Whilst it was not usual practice for the FCA to publish a SP report in full, there had been a commitment to publish the outcomes of this review, and it should take the form of a document (content and length to be determined) containing important detail including the FCA's view on the extent of systematic failures.
- The statement from the FCA on the outcomes should be published simultaneously with RBS' disclosure on next steps.

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Decision: ERIC agreed that the FCA should not publish the Skilled Person's final report.

Decision: ERIC agreed on the basis of existing information that the FCA should release a document (content and length to be determined) on the outcomes of the Skilled Person's final report. This should be overseen by ... for review by ERIC.

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ExCo Paper

RBS GRG

1 November 2016

For Decision

Follow-up

Decisions also need to be taken about the FCA's .. publication of the FCA's conclusions, and how to respond to demands for publication of the skilled person's report.

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Communications handling

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13. The context of our response is that:

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- expectations remain high that the skilled person's report and/or the FCA's report/conclusions will be published soon;
- there are concerns that delays to publishing the report, even if due to maxwellisation, are delays to justice (e.g. time bar on claims);

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15. A statement would need to cover:

the status of the review– whether we will be publishing the skilled person’s report and the difficulties associated with doing so, our assessment of the skilled person’s report and the next steps which we may be taking, including questions about enforcement. ...

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Board Paper

Date of Meeting: 3 November 2016

Subject: CEO Report

HSI - RBS GRG - Project Sapphire

... Moreover, Andrew Tyrie wrote on 18 October asking if we can update the Treasury Select Committee (TSC) on when we will publish the report and noting that the longer the delay in publication, the longer that many small firms may have to wait to receive compensation, should that be appropriate. We have received legal advice that we cannot publish the Skilled Persons Report unless it has been maxwellised. ...

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Minutes

Meeting : FCA Board

Date of Meeting 2 and 3 November 2016

... The Board noted a press release would be issued by the FCA to accompany the RBS announcement. The Board noted the desirability of being transparent, but recognised that at present the FCA was not in a position to publish the skilled person’s report due to s348, the need for consent by relevant parties and maxwellisation.

E-mail 19 December 2016 @ 16:38

Subject – RE ERIC 19 September 2016 – Project Sapphire (RBS GRG)

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Here is the final minute below – all the actions have now been closed.

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