Dear Andrew,

We have discussed on a number of occasions, most recently at the hearing, how the FCA should provide information that the Treasury Committee requires to exercise its scrutiny function. I would like to start by reiterating that, notwithstanding the differences of view we have had on this topic, the FCA takes the question of accountability extremely seriously and recognises the importance of the process.

The challenge, for both us and the Committee, is how we ensure that the Committee can properly exercise its functions while also ensuring that the FCA is able best to perform its role in compliance with its statutory obligations under s348 and with the benefit of appropriate, frank and open advice from external and internal sources.

As you are aware, one of the specific issues that the FCA has carefully considered is the extent of its regulatory remit over commercial loans with mark to market break costs. We have concluded that these loans are not within our scope and therefore that we do not have the power to require firms to undertake a redress scheme in relation to them. We wrote to Her Majesty’s Treasury to highlight this issue in February and May 2013 and have provided copies to the Committee.

Given the importance of this issue, the Committee has understandably asked for comfort that the approach we have taken to this was an appropriate one. We have explained the steps we have taken in reaching this conclusion and, in particular, that we did not rely solely on our own internal advice but also sought advice from a leading practitioner in this field – Charles Flint QC. Our General Counsel’s letter to you of 26 June 2014 set out the substance of that advice; and Mr Flint has confirmed that this letter was consistent with his advice. The aim in doing so was to provide the Committee with reassurance that we had properly considered this issue and taken appropriate external advice while at the same time ensuring that we did not waive legal professional privilege (which as you will be aware depends in part on confidentiality) in the advice.
My understanding is that the Committee believes that the steps we have taken are not sufficient to satisfy themselves, and fulfil its scrutiny of the FCA. The request is therefore that the advice itself to be reviewed on behalf of the Committee. With that in mind, we agree that a QC appointed by the Treasury Committee should be given access to review the advice in our offices on a date to be arranged. This would be on the basis of a limited waiver of privilege by the FCA i.e. privilege would be waived solely for the purpose of the QC advising the Committee as to the content of the advice and on the understanding that the advice (both the documents and the substance of it) remains confidential. I hope that this will give the Committee the necessary assurance that the FCA's stance is based on considered and reasonable legal advice.

I very much hope this is acceptable as a way to deal with this issue. It is important to me that we have a constructive working relationship with the Committee going forward.

Yours sincerely

John Griffith-Jones

Chairman, Financial Conduct Authority