Thank you for your letter of 4 September 2017 about the reported leak to the BBC of the report into the treatment of SME customers referred to RBS GRG, conducted under Section 166 of the Financial Services and Markets Act (FSMA).

Can I start with an important overarching point, namely that the activities undertaken by GRG for business customers were for the most part outside the scope of regulated activities as determined by the Regulated Activities Order established by FSMA. This restricts our scope to act but does not remove it altogether. Specifically, we are restricted from using tools available under FSMA which are limited to regulated activities. Important here is that we cannot require an authorised firm to set up a scheme to handle complaints, and thus we cannot specify the form of any scheme that is established by firms. Instead, it is for the firm to set up the scheme, though we can exercise a broad influence over the appropriateness of such a scheme. In the case of GRG, the firm decided to review and refund complex fees. For all other issues which concern customer service and treatment the scheme allows customers to set out their individual grievances and why they consider they are entitled to compensation. We consider this to be an appropriate response provided that the complaints are investigated fairly, a point that I know is of concern to former GRG customers. It is to ensure that the process is fair that Sir William Blackburne was appointed. Sir William will therefore hear appeals from customers who are not satisfied with the process. As you may know, Sir William has criticised RBS in his latest report for their slowness in establishing the scheme. Along with Sir William, we intend to ensure that RBS deal with these issues promptly and I have obtained assurances from the Chief Executive that this is being done. On the basis of my involvement, I have no reason to doubt the independence and commitment of Sir William.

The FCA does however have scope to act in other respects in a case such as GRG which falls outside the RAO. This is because the allegations against GRG gave us concerns as to whether RBS had treated customers appropriately, in particular those in financial difficulties. If substantiated, such concerns could also indicate wider issues in relation to governance and culture within RBS. The FCA was therefore able to require the preparation of the Section 166 report. It has formed the basis for our work to determine whether a formal investigation should be undertaken against either the firm or individuals involved in GRG.
I believe that we are near to reaching a conclusion on whether a formal investigation is called for, having undertaken work to build on the S166 report.

Can I turn next to the reported leak of the GRG Report. Publication of information contained within the Report is likely to constitute a breach of section 348 of FSMA. Section 348 prohibits the disclosure of confidential information received directly or indirectly from a ‘primary recipient’ without consent from the person or persons from whom the primary recipient obtained the information and, if different, the person to whom the information relates. Disclosure in breach of section 348 is a criminal offence. A skilled person appointed under section 166 FSMA is listed in section 348(S)(d) of FSMA as a primary recipient.

The effective management of sensitive information is something I take very seriously. I am therefore, like you, concerned at the claim by the BBC that it has seen a copy of the Report. I can confirm that we have initiated a leak enquiry and I will write again with the findings once it has completed. I can also confirm that we have asked RBS and Promontory Financial Group and its sub-contractor Mazars who wrote the Section 166 report, to do the same. I will also write to you again setting out the outcome of these enquiries. I have attached for your convenience the outcome of the leak review we carried out following the leak of RBS’s compensation scheme in November 2016. I also note your point that the FCA has been associated with past leaks. We have no evidence of leaking from the FCA, but it is very important that if anyone has such evidence, they provide it to us so we can act. Leaking is unacceptable and contrary to the proper conduct of public affairs.

In your letter you suggest that the balance has tipped firmly in favour of full publication of the report. I recognise the public interest in the outcome of the GRG review but I do not believe it is best served by us publishing the full report. Section 166 reports are an important supervisory tool for the FCA. They are conducted on the basis that there is no intention to publish, and it is our view that this greatly facilitates the efficiency of the process. Typically, it does not, for instance, mean that firms seek to withhold information and we are not required to use our legal powers to deal with such situations. I am very keen that this situation should continue, and that it would not be in the public interest to limit the effectiveness of the process. It is also the case that because Section 166 reports are not intended for publication, individuals who may be identifiable in the GRG report have not had the opportunity to see or comment on adverse comments which may relate to them – they have not been "Maxwellised". This is very important because were we to decide to publish the report, it would have to be Maxwellised, and since there is a possibility of formal investigation and sanctions my assessment is that it would be a lengthy and difficult process.

However, I recognise that the public interest justifies greater disclosure of material in the report relevant to the complaints of former customers. It is therefore our intention to publish a detailed summary of the Section 166 report in a form that should minimise the need for Maxwellisation. Moreover, to provide assurance on the summary, we have asked an external Counsel to confirm that it is a fair and balanced account of the report’s findings. The summary is largely ready for publication once we have reached a conclusion on the need for a formal investigation. Our assessment is that it will require the agreement of RBS and Promontory to publish, but not Maxwellisation in relation to individuals.
To conclude, I believe there are strong reasons why Section 166 reports should not be published, which are to preserve the ability of the FCA to pursue its statutory objectives. But I recognise there is a public interest in publishing material relevant to the complaints of customers. It is with this in mind that we intend to publish a detailed summary.

Yours Sincerely

Andrew Bailey
Chief Executive