Rt Hon Nicky Morgan MP
Treasury Select Committee
House of Commons
London
SW1A 0AA

28 November 2017

RBS Global Restructuring Group (‘GRG’)

I am writing to you with fuller answers to questions raised during the 31 October Committee hearing about the review of RBS’s treatment of SME customers transferred to GRG between 2008 and 2013, and to confirm that we have today published the FCA’s Final Summary of the GRG review (‘Final Summary’).

We have included additional information in the Final Summary in response to the drafting suggestions made by the Specialist Advisers instructed by the Committee. As you will see, with reference to paragraph 7 of the Specialist Advisers’ report of 24 October 2017 to the Committee, the Final Summary now includes:

- more information about the impact on customer treatment of the shortcomings in GRG’s systems and controls in terms of governance and oversight, transfer to GRG and the approach to customer turnaround;
- a specific reference to how the customer transfer process operated in Northern Ireland;
- a fuller explanation of the skilled person’s overall conclusion about GRG’s general view of the use of Upside Instruments; and
- clarification that, where we list the skilled person’s recommendations, we have not included passages of accompanying commentary.

The Committee also asked about the approach taken by the Skilled Person to:

- identify SME customers to be included in the case review sample, and
- to assess the viability of the SME customers that it included in its case review sample.

The Skilled Person’s report included an annex in which it set out its sampling approach. The Skilled Person also explained in some detail how it assessed the viability of each SME customer in the case review sample in the chapter of its report that covered its distress assessment work.
Working with independent Counsel we have addressed the Committee’s request for a summary of this information to be included in the Final Summary. More information about the required sampling approach can also be found at Appendix E of the requirement notice (which we published last month as part of the Interim Summary).

We have made it clear in the Final Summary where we have made changes to the FCA’s Interim Summary, in response to the Specialist Advisers’ drafting suggestions and in response to the Committee’s questions during the hearing about the skilled person’s methodology. If the Committee requires more detailed information about the way GRG operated, it may wish to communicate directly with RBS as they will be familiar with all of the policy and procedure documents that would be relevant to Members’ questions.

In terms of wider next steps, we are seeking to broaden the scope of the Financial Ombudsman Service to provide more SME customers with access to its dispute resolution service, and we have published a Consultation Paper on voluntary industry codes of conduct (CP17/37).

Material financial distress

The Committee asked me a number of questions about the 16% figure in the Skilled Person’s report, and expressed concern that the Skilled Person’s case review sample appeared to include a high proportion of non-viable SME customers. There is some understandable confusion so, with the consent of the Skilled Person and RBS, I have set out a fuller explanation than that I was able to provide at the hearing.

The Skilled Person’s report refers to a sample size of 207 cases, comprising a representative sample of 178 cases and a further 29 cases drawn from those who had contacted Dr Tomlinson.

In reaching a view about the likely extent of financial distress that GRG’s inappropriate actions may have contributed to, the Skilled Person placed each of the 178 SME customer cases in the representative sample in one of the following groups:

- Group 1 – Business clearly not viable - 61
- Group 2 – No inappropriate actions identified - 9
- Group 3 – Inappropriate actions not likely to result in material financial distress - 89
- Group 4 – Inappropriate actions likely resulted in material financial distress - 19

The Skilled Person concluded that, of these 178 cases, 61 were not viable on entry to GRG and, therefore, the other 117 appeared to be viable (or potentially viable) on entry to GRG.

The Skilled Person expressed its finding about the 19 ‘Group 4’ cases in two ways:

- 11% - it expressed the 19 cases as a percentage of all 178 cases;
- 16% - it expressed the same 19 cases as a percentage of the 117 viable cases.
<table>
<thead>
<tr>
<th></th>
<th>Representative sample</th>
<th>Representative sample excluding non-viable cases</th>
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</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>61 (34%)</td>
<td>N/A</td>
</tr>
<tr>
<td>Group 2</td>
<td>9 (5%)</td>
<td>9 (8%)</td>
</tr>
<tr>
<td>Group 3</td>
<td>89 (50%)</td>
<td>89 (76%)</td>
</tr>
<tr>
<td>Group 4</td>
<td>19 (11%)</td>
<td>19 (16%)</td>
</tr>
<tr>
<td>Total</td>
<td><strong>178</strong></td>
<td><strong>117</strong></td>
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The Skilled Person’s distress assessment conclusions in the further 29 cases are summarised in the table below.

<table>
<thead>
<tr>
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<th>Further cases</th>
<th>Further cases excluding non-viable cases</th>
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<tbody>
<tr>
<td>Group 1</td>
<td>4 (14%)</td>
<td>N/A</td>
</tr>
<tr>
<td>Group 2</td>
<td>1 (3%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>Group 3</td>
<td>17 (59%)</td>
<td>17 (68%)</td>
</tr>
<tr>
<td>Group 4</td>
<td>7 (24%)</td>
<td>7 (28%)</td>
</tr>
<tr>
<td>Total</td>
<td><strong>29</strong></td>
<td><strong>25</strong></td>
</tr>
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These were not formal or enforceable determinations made by the Skilled Person, and RBS does not agree with these outputs from the Skilled Person’s case review analysis.

The FCA discussed and agreed the process and methodology used by the Skilled Person to determine which of the four groups applied to each of the SME customers in the case review sample.

The Skilled Person made it clear to the FCA during the review that this process involved the exercise of professional judgement about what were often longstanding and complex bank/customer relationships. The Skilled Person’s approach took into account that it was often a combination of circumstances and actions that gave rise to the most intense customer concerns. For practical purposes, it limited its consideration of the actions of RBS to the period the customer was in GRG, plus one year before the customer was transferred. The Skilled Person considered it necessary to distinguish between the overall level of distress experienced by the business and the circumstances that would in its view have existed, but for RBS’s inappropriate actions. It therefore assessed whether inappropriate actions by RBS were likely to have given rise to material financial distress over the period over and above that which the business would have experienced were it not for those actions.

Each case was different and created its own challenges. A set of criteria, which might have worked for some cases, would not have worked for all of them. To help achieve consistency in the process, the Skilled Person formed a Distress Assessment Panel to consider each of the cases in the review sample, consisting of senior members of the project team so that a range of skills, knowledge and relevant experience were applied to the decision-making in each case. Once it had completed its assessment of each case, it reviewed a selection of cases to ensure that it was treating them consistently, where appropriate, with other cases with similar features.
That RBS does not agree with many of the Skilled Person’s conclusions should not undermine confidence in the review process, but it does show how complex and contentious this review has been, and is one of the reasons why it took such a long time to complete the work.

**GRG complaints scheme and guidance for former shareholders**

The Committee asked me whether RBS had amended its website to make it clearer that former shareholders may still complain through the GRG complaints scheme. RBS confirmed to me that it has updated its web page ([www.rbs.com/GRG](http://www.rbs.com/GRG)) to include the following FAQ on this point:

**Can I complain if I am no longer a shareholder / the business is in administration / liquidation?**

Yes, you can complain. However, any offer can only be made to the officials of the company presently appointed and listed at Companies House or Companies Registration Office in the Republic of Ireland. So it is strongly recommended that you engage with the relevant person at the Administrator or Liquidator should you wish to complain.

RBS wrote to all in-scope customers it identified about the complaints scheme at its launch. At the time of the November 2016 announcement it also took full page adverts in the national media to ensure customer awareness and to direct them to its web site. As you mentioned that one of your constituents was not aware of the GRG complaints scheme, I would urge them, and all eligible SME customers with outstanding grievances, to visit RBS’s web page and to submit their complaints as soon as possible.

RBS asked me to clarify one point about the GRG complaints scheme. During the Committee hearing I described RBS’s offer to pay the reasonable costs of a SME complainant’s meeting with an independent professional loss assessor as ‘independent mediation’, which was not correct. Mediation is a different process, so I apologise if I caused any SME customers confusion. We are discussing with RBS in what circumstances mediation and arbitration might be appropriate as a means of resolving disputes about GRG-related consequential loss claims. We have discussed with Sir William Blackburne the challenges of dealing with consequential loss claims. Such claims, which are often high value and introduce complex technical arguments, may need expert evidence. Being realistic the courts may be the most appropriate place to consider each side’s arguments and their evidence.

**RBS’s letter to the Committee**

During the session I was asked by the Committee for my view of the points made in RBS’s letter of 30th October 2017 to the Committee. I remarked that I had very little time to study the letter. While I offered some initial comments during the hearing, I said I would write with a more reflective view.

The Committee stated (question 56 in the hearing transcript) that: ‘There are four areas where there is agreement, and then there is a list of points that RBS does not agree with.’ In fact a number of areas, covered by questions 57 to 65, are matters where RBS had noted and agreed with (not disagreed with) the findings of the independent review. For completeness I also address the points of disagreement expressed in RBS’s letter to the Committee that were not mentioned in the hearing.
Allegations not proven by the GRG review

RBS noted and agreed that the independent review did not find widespread or systematic inappropriate treatment of customers in the following areas:

- RBS did not set out to artificially engineer a position to cause or facilitate the transfer of a customer to GRG (see section 2(d) of the Final Summary),
- SME customers transferred to GRG were exhibiting clear signs of financial difficulty (see section 2(d) of the Final Summary),
- there was not a widespread practice of identifying customers for transfer for inappropriate reasons, such as their potential value to GRG rather than their level of distress (see section 2(d) and 2(h) of the Final Summary),
- there was not a widespread practice of requesting personal guarantees and/or cash injections when GRG had already determined that it had no intention of supporting such businesses (see section 2(f) of the Final Summary),
- there was not a widespread practice of RBS making requests for information from customers that were unnecessarily burdensome (see section (i) of the Final Summary),
- there was not a widespread practice of RBS acting as a 'Shadow Director' (see section 2(m) of the Final Summary),
- there was no evidence that an intention for West Register to purchase assets had been formed prior to the transfer of the customer to GRG (see section 2(m) of the Final Summary), and
- there were no cases identified where the purchase of a property by West Register (as opposed to by another person) alone gave rise to a financial loss to the customer (see section 2(m) of the Final Summary).

These findings highlighted by RBS were taken from the Skilled Person's report, and were reproduced on pages 6 and 9 of the Interim Summary. I can confirm that, while the GRG review identified isolated examples of poor practice, it concluded there was no widespread or systematic inappropriate treatment of customers in these areas. We listed these findings on page 9 of the Interim Summary and signposted where to find more detailed commentary on each of them within the Interim Summary. I have added that signposting to the list of findings above, as they also appear in the Final Summary. From our analysis we have no basis for disagreeing with these findings.

Areas of difference

Widespread and systematic inappropriate treatment

As the Interim Summary made clear, there were some areas where the Skilled Person concluded that inappropriate SME customer treatment was both widespread and systematic. We obtained an independent legal view that we had represented the Skilled Person's conclusions in a fair and balanced way in the Interim Summary – a view which was confirmed by the Specialist Advisers instructed by the Committee.
To address RBS's comments about whether the Skilled Person redefined 'systematic' in its report, it is correct that the Skilled Person's interpretation of the definition of 'systematic' was broad in that it included the situation where RBS failed to take action to address the inevitable and foreseeable consequence of a decision (also referred to as 'omission') as well as an intentional and co-ordinated strategy (or deliberate proactive steps by a group of people). The FCA's view is the review findings about systematic inappropriate customer treatment are mostly at the 'omission' end of this spectrum.

In terms of whether the failings were 'widespread', additional analysis was undertaken by the FCA, which was mainly aimed at ensuring we understood the Skilled Person's reported findings and could be satisfied that RBS's response to the GRG review was appropriate. From that analysis, I can say that we do not agree with RBS's comment that the Skilled Person focused on conduct in isolation from customer outcomes or that the Skilled Person assessed inappropriate treatment independently of the identification of customer detriment/causal links. The basis for this conclusion is summarised below.

- It is a matter of fact that the Skilled Person undertook a two-stage review of SME customer cases in its review sample.

- In the second stage (which necessarily added to the time taken to complete the review) the Skilled Person focussed on the extent if any of financial distress caused or contributed to by the inappropriate bank actions that it had identified in its first-stage review.

- Where for example the Skilled Person only identified procedural or record keeping failures by RBS, which in its view did not contribute to material financial distress, it would have placed the review sample customers in Group 3.

- Where for example the Skilled Person identified more serious conduct issues which in its view contributed to material financial distress, it would have placed the review sample customers in Group 4.

- The Skilled Person also noted, and we included this point in the Interim Summary, that there were seldom clear-cut causal links between bank actions and particular consequences.

In RBS's letter of 30 October 2017 to the Committee, it commented (under the heading '3. Material Financial Distress') that, in 7 of the 19 cases placed in Group 4, the bank's pricing proposals were not implemented by the bank or paid by the customer. RBS also described the Skilled Person's pricing findings as primarily related to the failure to record the rationale for pricing increases and to customer communication failures. While the Skilled Person did make these findings it also reported, for example, that there was undue and inappropriate focus on the generation of income in the form of pricing increases for SME customers, that some of the pricing observed was inappropriate when assessed against normal risk return principles or was otherwise excessive, and that there was little evidence of GRG engaging with the need to balance pricing increases with other considerations. The FCA's view is that, taking into account all of the Skilled Person's findings about pricing, it was appropriate for RBS to undertake the proactive review of complex fees (RBS has refunded £115m of complex fees).
**GRG turnaround objective**

It is helpful that RBS acknowledged in its letter to the Committee that the way the Skilled Person (and the FCA in the Interim Summary) described the twin objectives was accurate. It is agreed that GRG had an objective to be a major contributor to RBS’s financial objectives and to be at the leading edge of a wider rescue culture; these twin objectives have been described as the ‘commercial objective’ and the ‘turnaround objective’.

The GRG review concluded that in practice the strategic focus was on the commercial objective. That seems to me to be a reasonable conclusion, and we have no particular reason to dispute it from our analysis.

All I would add is that a distinction may be drawn between a policy commitment to provide turnaround, and the obligations of a bank and a customer created by a contract freely entered into. In practice, turnaround support is unlikely to be offered unless there is a reasonable prospect of a solution being identified that is of mutual benefit to the lender and customer and which fits with the commercial lender’s overall credit risk management. Our view is that the ‘systematic’ turnaround issues sit at the omission end of the spectrum that I referred to above.

**GRG relations with customers**

RBS has acknowledged that GRG’s tone and approach to customers was not always appropriate. While RBS makes the point that much of the period of the GRG review was also a difficult time for the bank and its employees, this in no way excuses any unprofessional conduct of individual bank employees.

If these cultural issues do not continue to be satisfactorily addressed into the future, for example in the operation of the complaints scheme itself, we will hold RBS’s senior management to account. We are able to do so under the Senior Managers’ Regime which came into force after the period covered by the GRG review.

**Confidentiality and maxwellisation**

You asked me to confirm whether the FCA’s decision not to publish the full Skilled Person’s report was based on the references to ‘management’ contained in it.

The short answer is yes to a large extent - it is the legal consequences of referring to what management knew or ought to have known which has proved particularly problematic and which we deliberately excluded from the Interim Summary. The Skilled Person’s report did in fact name certain individuals in a factual context and refers to ‘management’ in many places; it also contains personal data about some individuals, and contains some anonymised but specific case summary information about some of the SME customers in the review sample.

There were three legal reasons why we could not publish the full Skilled Person’s report. First, we would need the consent under section 348 of the Financial Services and Markets Act 2000 of those who, for example, were members of the ‘management’ of GRG during the period of the review. Second, the need to maxwellise individuals criticised in the Skilled Person’s report (again, by the references to ‘management’). Both of these would involve a lengthy and complex exercise – the outcome of which would almost certainly still result in less than full publication (for example, redactions would be required if consent was not given under section 348). Third, we are also concerned about the possible effect on our ongoing focussed investigation.
The Committee’s Specialist Advisers’ saw our reasons for non-publication and commented that:

'we have no reason to doubt the FCA’s position (as stated in the Introduction) that individuals (as opposed to RBS as a corporate body) have not been given an opportunity to respond to the (omitted) "state of knowledge" findings. Further, we see considerable force in the FCA’s concern that it would potentially be unfair to publish relevant findings as to management knowledge, even in summary form, prior to such an opportunity being afforded. That concern has particular force in circumstances where the FCA has said that it is currently conducting further investigations into the matters covered by the GRG Report.'

Next steps

At the end of RBS’s letter, it referred to fundamental changes to the culture, structure and operating model of RBS and its restructuring function. RBS has reported progress to the FCA and we expect RBS to continue to report on its implementation of the changes which take into account the Skilled Person’s recommendations.

While RBS also made it clear, including in its letter of 30 October 2017 to the Committee, that it does not agree with many of the Skilled Person’s findings, it agreed on a voluntary basis to refund complex fees and establish a complaints scheme to deal with most other types of complaint that SMEs are likely to make.

We have now published the Final Summary. I also made a commitment that the FCA will report back in due course, within the constraints of the statutory framework in which we operate, on the outcome of the ongoing focused investigation.

I hope this additional information is helpful and answers the questions which were addressed to the FCA in the 31 October evidence hearing.

Yours sincerely

Andrew Bailey
Chief Executive