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House of Commons  
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Tuesday 17 March 2015

*Dear Andrew*

Thank you for your letter of 12 March.

**In response to your specific questions concerning the liquidity auctions:**

- 1) Lord Grabiner's investigation into liquidity auctions arose from circumstances that were escalated from within the Bank in March 2014. Initially the information was unspecific but following internal investigation some evidence emerged, and Lord Grabiner was instructed in June. The decision to appoint Lord Grabiner was taken by the Governor and Sir David Lees as Chairman of the Oversight Committee; I was briefed at the time and the Oversight Committee was informed at its next meeting on 18 June. Lord Grabiner was chosen as he was already familiar with the Markets area of the Bank and at the time working on the FX review. External solicitors were not appointed: support for Lord Grabiner was provided by the Bank's legal department, which had already identified the relevant data. However the Bank also appointed Jonathan Laidlaw QC to advise on potential criminal offences.
- 2) Fees charged for the investigation were:  
Lord Grabiner £129,500. His charge rate was £1000 per hour.  
Adam Rushworth (Lord Grabiner's junior) £34,950. His hourly rate was £150  
Jonathan Laidlaw £37,125. His hourly rate was £500  
Additional costs of data extraction and transcription services were £5,796  
All these figures are before VAT  
The comparable figures for the foreign exchange market investigation were set out in my letters to you of 22 January and 12 February.
- 3) The costs were monitored by the Bank's legal counsel on behalf of the Oversight Committee.

I will certainly keep Parliament informed of developments in the case, though as you know there will be obvious constraints on what we can say – and on what the SFO can tell us. As you know, when the SFO confirmed its investigation in response to press enquiries, on 3 March, the Bank made a statement confirming that “it commissioned Lord Grabiner QC to conduct an independent inquiry into liquidity auctions during the financial crisis in 2007 and 2008. Following the conclusion of that initial inquiry, the BoE referred the matter to the SFO on 20 November 2014”. The SFO always advises against anyone offering commentary or disclosing details whilst an investigation is continuing, and gave that advice to the Bank. The Bank has followed it and neither the Bank nor the SFO intend to provide a running commentary on the investigation. It may be true that the Bank could have announced the bare fact of the referral and the investigation sooner, but it was mindful of the fact that to do so would provoke media speculation and attempts to identify and talk to the individuals involved that would risk prejudicing or undermining the investigation.

**In response to your specific question with respect to the FX review:**

Your final question returns to the matters we discussed on 3 March. Was Lord Grabiner free to investigate whatever he saw fit; and did we expect him to apply an "objective test" in judging the conduct of Bank officials? The suggestion I think was that the Oversight Committee's terms of reference were too narrowly drawn, asking Lord Grabiner to determine whether there was, on the part of Bank officials, actual involvement in, or actual awareness of manipulation or sharing of confidential client information or awareness of the potential for such manipulation, rather than an objective test of whether those officials ought to have been aware.

I was, as you know, not involved in drawing up the terms of reference. The first Oversight Committee that I attended as observer was immediately after that. Nevertheless, I certainly did not view them as restrictive. I have absolutely no doubt that the Oversight Committee intended that Lord Grabiner should be free to investigate whatever he saw fit. It was clear that any resources necessary for such a wide investigation would be made available to him. I know that Lord Grabiner was consulted about the terms of reference; and he was also aware of the exchange of letters of 14 and 23 April 2014 between yourself and Sir David Lees

As required under his terms of reference, Lord Grabiner focused not just on awareness of improper practices, but on awareness of the potential for such practices. And it is quite clear from his conclusions (and his recommendations) that he was concerned not only with whether Bank officials were aware of improper practices or the potential for them, but also with whether they ought to have been aware. I pointed out in evidence (Q187) that Lord Grabiner's first conclusion was "I have found no evidence that any Bank official was aware or should have been aware of any unlawful or improper behaviour in the FX market". The Oversight Committee explicitly asked Lord Grabiner to make recommendations, and Lord Grabiner did so, in the areas of record-keeping, training of Bank staff in the relevant regulations and of the systems and controls around the market intelligence function. Mr Mallet was criticised for the error of judgment of not escalating concerns to his superiors; and it is noted elsewhere in the Report that another official was not sufficiently familiar with the NIPs code – again matters of the professional standards to which officials should be held.

In short, the Oversight Committee expected that Lord Grabiner would judge the conduct of Bank officials against a standard equivalent to an objective test of what they should have known and done; and that he would recommend changes in practices where those fell short of a suitably professional standard. When I testified to the TSC, I had no doubt that Lord Grabiner saw it that way and said that, in my view, his report made it clear. I have since personally spoken to him and he has confirmed that my view of his understanding as expressed in this letter was correct.

I hope this is helpful.

Yours ever  
Arthur