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Our Ref: 150108G

Dear Mr Stanton,

Mr Wilson's allegations about HSBC and the actions of HFC Bank Limited

Thank you for your letter of 7 January 2015, addressed to Martin Wheatley, in which you ask a number of questions relating to allegations made by Mr Wilson about the former HFC Bank Limited (HFC), which was latterly a member of the HSBC group of companies. Martin has asked me to reply. Please accept my apologies for the delay in responding.

Mr Wilson's concerns, as detailed on his website, arise out of certain charging practices in connection with the collection of debts due under credit agreements made by HFC. The conduct about which Mr Wilson complains took place some years before the transfer of regulation of consumer credit from the Office of Fair Trading (OFT) to the Financial Conduct Authority on 1 April 2014.

For reference, HFC surrendered its OFT licence on 23 August 2013, so the FCA has never regulated HFC's consumer credit activity. HFC was previously an authorised person under the FSA and FCA, although its authorisation did not relate to consumer credit activity, and it ceased to be an authorised person altogether on 5 December 2014.

I note that the OFT, as the relevant regulator at the time of the conduct referred to in your letter, did expressly consider HFC's application of charges to debtors' accounts and it decided that the appropriate course of action was to place requirements on the firm. These requirements included HFC ensuring that its collection charges were set at an amount that enabled HFC to recover no more than the actual and necessary cost it reasonably incurred in relation to recovering or attempting to recover a sum owed to it by a customer. In light of the regulatory intervention by the OFT in 2010 and other factors, we do not currently intend to take further action.

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I respond to each of your questions in turn:

1. You ask whether the FCA is the appropriate body to investigate allegations of fraud and further, whether Mr Wilson is correct to allege fraud in this case.

Whilst the FCA has the power to prosecute fraud, for reasons of policy and the limitations of our statutory powers of investigation, we do so only where we are also prosecuting another offence for which we have express power and responsibility to prosecute. Standalone fraud cases are more appropriately prosecuted by the City of London Police, the Crown Prosecution Service (CPS), the National Crime Agency (NCA) or the Serious Fraud Office (SFO).

Where a complaint relates to the conduct of an authorised person in carrying on a regulated activity, the focus of our regulatory interest would be on whether the subject matter of the complaint is a contravention of regulatory standards to which our range of supervisory and enforcement powers applies. We would also consider the quality of the evidence to support the complaint, whether and how far there is a threat to our operational objectives and whether action would be consistent with the principles of good regulation, including whether it would be an efficient and economic use of resources.

It would not be appropriate for me to comment on the allegation of fraud in circumstances where other agencies are better placed to consider the allegation. I understand that Mr Wilson has requested the City of London Police to investigate his allegation that a criminal offence has taken place.

2. You refer to the press release published by the OFT on 22 November 2010 in relation to the requirements it imposed on HFC (among others). You ask some specific questions about the evidence and information gathered in the OFT's investigation that led to the imposition of those requirements.

I am not able to provide all of the detail you ask for, as some of this information is confidential and prohibited from disclosure under section 348 of the Financial Services and Markets Act (FSMA) or Part 9 of the Enterprise Act 2002. I hope, however, that the information I do provide will be of assistance to you.

I understand that the action the OFT took in relation to HFC formed part of a wider project about the use of charging orders and other debt enforcement tools by a number of firms in the banking sector. There is no indication that investigation related to the finding of the Solicitors Regulation Authority (SRA) on 21 March 2007.

Regarding your specific question, I can confirm the FCA and SRA do have systems for sharing information that may be of mutual interest. For example, the FCA has a Memorandum of Understanding with the SRA covering exempt professional firms and authorised professional firms. There are also other statutory gateways that may permit disclosure of relevant information.

The requirements imposed by the OFT under the Consumer Credit Act 1974 were forward-looking and did not include (and could not have included) provision for redress. Section 33C (3) of the Consumer Credit Act (now repealed) expressly provided that a person could not be required by the OFT to compensate, or otherwise to make amends to, another person. The Financial Ombudsman Service did, however, have jurisdiction

to deal with complaints referred to it by eligible complainants in relation to the consumer credit activities of these firms if the relevant conditions in the Dispute Resolution sourcebook were met.

The powers of the OFT included the power to revoke a consumer credit licence if the licensee was not a fit person (a revocation did not take effect until after the appeals process had been exhausted). They also included the power to impose requirements on a licensee relating to a business which the licensee was already carrying on or was proposing to carry on under the licence, where the OFT was dissatisfied with any matter in connection with any conduct of the licensee or of an associate or former associate. The OFT could also impose a financial penalty of up to £50,000 if a person subsequently failed to comply with a requirement. From February 2013 the OFT had the power to suspend a licence with immediate effect if it appeared to the OFT to be urgently necessary for the protection of consumers.

Since the transfer of consumer credit regulation to the FCA on 1 April 2014, all firms carrying on credit-related regulated activities have been required to comply with the rules in our Handbook, including the Principles for Businesses and the standards in our Consumer Credit sourcebook. In relation to misconduct by an authorised person in carrying on credit-related regulated activities on and after 1 April 2014, a suite of powers under FSMA is potentially available to take remedial, protective and disciplinary action. We have, for example, the power to impose requirements on an authorised person, which may potentially include requirements to review past conduct and make redress where appropriate. In certain circumstances, we can impose financial penalties, suspensions or public censures and we can vary or cancel the permission of an authorised person. We also have powers to apply to the court for or require restitution where the relevant conditions are met.

You ask about the powers of the FCA to deal with events that may have taken place before 1 April 2014 when the OFT was responsible for the regulation of consumer credit. In general terms, where an OFT licensee ceased to carry on consumer credit business and surrendered its consumer credit licence before 1 April 2014, and never became an authorised person under FSMA or was an authorised person but is no longer (as in the case of HFC), our powers are limited; if the person concerned was subject to a requirement under the Consumer Credit Act and failed to comply with it while the person was a licensee, we can, in principle, impose a fine up to the £50,000 limit in relation to each failure. If the licensee committed a criminal offence under the Consumer Credit Act before 1 April 2014, we have the power to prosecute. The position of the FCA in respect of fraud offences is set out above.

In relation to sanctions for poor practices in conducting consumer credit business prior to 1 April 2014 by a firm that is presently an authorised person under FSMA (for example, because it has obtained interim permission under the transitional arrangements governing the transfer to the FCA), the broad position is that the disciplinary powers of the FCA are equivalent to the powers that the OFT had at the time that the conduct took place. Of course, past conduct before 1 April 2014 may have relevance for our supervision of a firm going forwards. For example, we could decide to cancel a firm's permission if its past conduct suggests that it is failing, or is likely to fail, to meet the threshold conditions. Similarly we may prohibit an individual if past conduct demonstrates a lack of fitness.

3. You ask whether we can assure that the activities in the OFT's requirement on HFC have ceased. As noted above, HFC surrendered its consumer credit licence in August 2013, and is no longer undertaking any regulated consumer credit activity.

More generally, all consumer credit firms that were previously regulated by the OFT and are continuing to undertake consumer credit activity are being required to apply for full authorisation from the FCA so that we can give greater assurance to industry and consumers that all regulated firms meet our standards. My colleagues would be happy to brief you on this process in more detail if that would be helpful.

4. You raised Mr Wilson's concerns about the use of wording supplied by HSBC in a reply from the FCA to him. In order to be of assistance we provided additional information which included the wording in question. I acknowledge that this was a mistake on our part and apologise for its use.

I hope that this is helpful.

Karina McTeague
Director of Retail Banking
Supervision Division