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## **OPEN LETTER TO THE NIKHIL RATHI REGARDING MARK STEWARD**

**Friday, October 21st 2022, by Email only.**

Dear Nikhil,

I hope you are well.

I write to you solely in my capacity as Founder of the Transparency Task Force, further to this week's [announcement](#) that Mark Steward is to leave the FCA.

### Mark Steward's recent public statements

It is our view at the Transparency Task Force that Mark Steward's position became untenable following the remarkable [interview](#) he gave the Sunday Times in which he (wrongly, in our opinion) essentially claimed that the FCA had no powers to act in respect of the Blackmore Bond scandal and sought to shift the blame to both Government and consumers. We believe that the situation became far more acute following his admission in the regulator's [Annual Public Meeting](#) on 12 October that it did in fact have such powers all along, and is now using them, albeit five and a half years too late.

Consumers who lost £47m in that scandal are entitled to ask why, if the FCA has relevant powers in October 2022, it chose not to exercise them in March 2017 when, as revealed in a recent edition of [Panorama](#), they were first altered to grave risk of detriment and invited to collate evidence of wrongdoing and close down the alleged scam.

While Mark Steward's acknowledgment last week that the FCA does in fact have the necessary powers represents a step forward, his comments at the Annual Public Meeting also introduced two significant steps *backward*.

First, he claimed that the promotions issued for Blackmore Bond were 'largely accurate'. This implies an intention not to enforce against the authorised firm that approved them. We believe he is wrong, and that the promotions were grossly misleading. By way of evidence, we offer [this mark-up](#) of just one of them, produced by a professional compliance consultant, highlighting some passages that someone in that profession would bring to a client's attention as being potentially misleading.

Second, he asserted that the insurers providing the capital guarantees on which consumers relied were 'legitimate'. Please see the tweets sent by Ian Beckett this week ([@ianbeckett](#)) which provide compelling evidence that those insurers are not, in any normal sense of the word, 'legitimate'.

### Remedies sought

I should be grateful if you would urgently take a look at the financial promotions and the Beckett tweets and let me know whether, on reflection, the FCA wishes to resile itself from Mark Steward's comments.

It matters very much to Blackmore investors that the FCA makes a swift and public reverse ferret on these two issues. If it can be shown that the authorised firm that approved the financial promotions gave the green light to defective promotional material, it may be possible to make them compensate (whether by means of FCA action or litigation) the losses of investors who relied on those documents.

Likewise, it is crucial that the FCA ceases to turn a blind eye to the shortcomings of the insurers (even where they operate outside the FCA's jurisdiction, offshore), because doing so is incompatible with investigating the actions and inactions of the UK-based and FCA-authorised brokers who placed the insurance business. If it can be shown that the insurers were defective, it is reasonable then to ask whether sufficient (or any) due diligence was undertaken by the brokers. If the answer is negative, it is possible that redress could be obtained from those intermediaries, again whether as a result of regulatory action or, if necessary, through litigation.

Finally for this section, it is clear that Enforcement should be investigating the firm that approved the promotions and the brokers that arranged the insurance for the capital guarantee schemes.

### Wider issues

It has taken more than five and a half years for the FCA to be 'dragged, kicking and screaming', to the point where it has acknowledged it possessed the necessary powers in respect of Blackmore Bond. However, the organisation you lead and are responsible for is still denying the

basic facts of the case and is therefore seemingly unlikely to secure for the Blackmore victims material redress within a reasonable timeframe (or, perhaps more likely, ever). You must appreciate that those who invested in good faith in the products are now asking themselves why the regulator does not do the decent thing and compensate them.

We believe they are also entitled to ask whether it is morally acceptable that they can't obtain such an outcome through the Complaints Scheme because it [cannot compensate for regulatory failure](#) and have no right to sue the regulator to recover their losses because it is [exempt from civil liability](#).

Blackmore Bond raises other, very serious questions, including:

- Would a genuine duty of care owed by authorised persons to consumers make it easier for the FCA, or consumers, if the regulator is obstructive or reluctant to act, to secure redress from firms in situations such as those present in this case, such as where a firm sponsors appointed representatives, approves promotions for an unauthorised firm or places insurance with an insurer, perhaps offshore, without appropriate due diligence?
- Is the FCA sufficiently transparent and accountable to stakeholders, especially the consumers who, indirectly, fund it by buying financial services from levy-paying firms?

You may be aware that we have provided written [testimony](#) to the Parliamentary Bill Committee considering the Financial Services and Markets Bill, setting out proposals for three amendments that would achieve the following:

- [Redress for regulatory failure](#) - The Complaints Scheme would be revised so it explicitly covers the payment of compensation to consumers when the FCA lets them down; the Complaints Commissioner's findings would become binding on the regulators (currently they're only advisory, and are sometimes ignored) and the FCA would lose its exemption from civil liability and be unable to rely on the [Limitation Act](#) for the first six years;
- [A statutory duty of care](#) - firms and individuals authorised by the FCA would be required to avoid causing reasonably foreseeable harm to consumers, and would be civilly liable for any losses suffered by consumers in the event of breach;
- [An oversight body for the FCA](#) - A consumer-led body would be created charged with evaluating the effectiveness of the FCA in pursuing its operational objectives. It would conduct periodic reviews of the regulator's performance, commission independent reviews following cases of regulatory failure and make certain appointments relevant to the regulator's governance and consumer protection

We ask that you read our submission to the Bill Committee and give consideration to publicly backing our proposals. We hope you will agree they are intrinsically reasonable: consumers should be compensated when a statutory body fails them; Parliament legislated to require the FCA to consult on, and subsequently introduce, a duty of care, but it has refused to do so; and with the industry already over-represented on the statutory panels (an imbalance due to worsen as a result of the Bill) and credible evidence from John Swift KC and the Walker

Sigismund employment tribunal that the FCA is subject to political pressure from the Treasury, it is clear that greater accountability to consumer interests is required.

As a PPE graduate, you will be aware that the principal causes of revolutions are the failure of incumbents to adapt, and their refusal to yield to the reasonable demands of their critics. We at TTF are not, by instinct or preference, revolutionaries; we would prefer to work with the FCA to see it improve, and rebuild stakeholder confidence, in its current guise and under your leadership. But I think this latest episode, combined with other headwinds we know are coming the FCA's way, give us confidence that if you don't accept this course of action, more radical outcomes will soon be proposed by others, and will receive a favourable hearing. We believe that our three proposed amendments will create the conditions necessary to place the FCA on a path toward recovery, and rebuilding confidence. We hope you will endorse them.

With your support, I believe our proposed amendments will pass; but it will take a while for them to do so, and for the measures to be implemented. Luckily, there's something else you could do to improve co-operation and transparency in the short term. We believe it's unacceptable that the FCA has denied Transparency Task Force, by some margin the largest campaigning organisation in the sector, permission to participate in its Consumer Network. You could change that. We stand ready to work with you; are you willing to reciprocate?

#### Political context

While we believe it is right that Mark Steward is going, we do not believe that his departure, nor the resignations of the other high-profile figures who have left during your tenure, will in itself change the FCA for the better, let alone fix it. Whoever fills this latest vacancy will still have to contend with the fact that only around 500 people work in Enforcement, a number we believe is wilfully inadequate given the scale and prevalence of misconduct in the sector, and will continue to be hampered by the legacy of regulatory inaction and conflicts of interest that make it so difficult for that department to act decisively to address behaviours previously undetected, condoned or facilitated by other parts of the FCA, or even by Enforcement itself.

I hope therefore that you will not be playing the 'bad apple' card, however *sotto voce*, in the media or with politicians: Mark Steward is not an outlier, and it is the organisation's overall culture, leadership and lack of transparency and accountability that must be addressed.

The Blackmore Bond scandal is also acutely embarrassing for the Treasury, which issued a briefing to a number of MPs following the broadcast of [Panorama: The Billion Pound Savings Scandal](#), which focused on regulatory inaction in response to Blackmore Bond and other investment scams. The HMT briefing repeated the FCA line that because mini-bonds are not regulated products and Blackmore Bond plc was not an authorised firm, the regulator had no powers to act.

As you must surely now know, this is simply not an honest reflection of the position. We set out [here](#), in a statement prepared with the help of a professional compliance consultant, why the 'sorry, nothing to do with us' defence just won't wash.

While I do not know whether the Treasury briefings to MPs resulted from the supply of misleading information by the FCA or from mistakes made within that organisation, it is obviously important that the regulator alerts HMT to the misbriefing and that HMT writes to MPs to correct the false impression that the statements generated.

I ask that you do this, and that you supply me with a copy of the letter and details of the recipients, please - for it would be wholly unacceptable for HMT and/or the FCA to knowingly allow Parliamentarians to remain misled, whether accidentally or otherwise, once it has been exposed that (what I'll call for now) a 'discrepancy' has occurred.

### Conclusion and next steps

In this letter, I have asked you to consider doing the following:

- Publicly correct Mark Steward's false claims that the Blackmore Bond promotions were 'largely accurate' and that the insurers providing the capital guarantee schemes were 'legitimate';
- Launch Enforcement investigations into the firm that approved the financial promotions, and the insurance brokers that arranged insurance for the capital guarantee schemes;
- Publicly back our three proposed amendments to the Financial Services and Markets Bill and work constructively with us on implementation, should they become law;
- Admit Transparency Task Force to the FCA's Consumer Network;
- In your and the FCA's public and private statements about Mark Steward's resignation, make it clear that it's the organisation and not the individuals that should be blamed for the missteps that happened in Enforcement on his watch;
- Write to the Treasury setting out the correct regulatory position in relation to Blackmore Bond, and ask them to write to all MPs correcting the misleading statements it has previously issued on the subject

For each of the above, please either provide evidence of compliance with our request, or, should you decide not to comply, your reasons for not doing so.

I would be pleased to make myself available at any reasonable time to discuss the issues raised.

It is my intention to publish this letter and updates on your response to it in our weekly *Transparency Times* newsletter, on social media, and to circulate the same to journalists and politicians. So I would ask you to consider that the time taken to respond, the nature of the response, and whether it is from you or Executive Casework, will all be noted upon by relevant stakeholders.

As you are aware and have previously acknowledged, TTF is a 'critical friend' to the FCA. That's a role we take very seriously, because we are cognisant of the [serious harm and suffering](#) caused to innocent members of the public when the FCA fails to provide 'an appropriate degree of consumer protection' as mandated by Parliament.

Please understand therefore that the criticisms in this note are well-intended, and if you respond to them in the right way, will, I am sure, be of benefit to FCA, and far more importantly those it is meant to protect.

I look forward to hearing from you soon.

***A.P. Agathangelou***

Andy Agathangelou FRSA

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