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Rt Hon Nicola Sturgeon MSP  
First Minister of Scotland  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

Dear First Minister,

In your letter in response to questions raised by Ian Fraser dated 16 May 2015, you assured him that the Crown Office and Procurator Fiscal Service is actively investigating crimes potentially committed by Scottish-based banks. This followed a Crown Office press release dated 2 July 2012 in which it confirmed it was investigating misconduct by Scottish banks. You concluded your letter to Fraser by stating that, if criminality is uncovered, the Lord Advocate has indicated that criminal proceedings will be instructed.

It is the last sentence that I take issue with, and why I now inform you of the factual position which contradicts the assurance that was given to you by the Lord Advocate last year.

Five corporate victims of the Royal Bank of Scotland last November made complaints to Police Scotland in Dundee, providing them with very clear evidence, with mine supported by counsel's opinion, that identified fraud by RBS. During a telephone conversation with Detective Sergeant Ian Whittle of the Police Scotland's Economic Crime Unit in Dundee, on or around 10 February, I was assured that my submissions, along with those of my fellow victims, had been passed to the Crown Office.

However, when I asked during that conversation why we had not received any progress report or even acknowledgement from the Crown Office, D.S. Whittle told me that that it would be at least a one-year investigation, at the end of which the Crown Office "would not pursue, and it would therefore be a waste of police resources". By implication, Whittle was saying the prosecutorial agency had instructed the police that no further investigations should be pursued into alleged frauds committed by banks.

I conveyed this information to one of my fellow victims, who also telephoned D.S. Whittle, and he received the same information. When pressed, D.S. Whittle stated that he was prepared to be quoted on the attitude of COPFS. However when James Hurley, a journalist at *The Times*, telephoned D.S. Whittle for comment, Whittle refused to take the call.

It would appear from D.S. Whittle's comments that the Crown Office has no intention of prosecuting bankers for alleged crimes, even in instances where it has been presented with compelling, or indeed irrefutable, evidence.

I understand the Lord Advocate stood before the Holyrood parliament and intimated that *the police have a duty to follow the evidence* in relation to the alleged mortgage fraud being linked to Michelle Thomson MP. That is all well and good. But surely Frank Mulholland

recognises that, were following evidence to become an arbitrary duty, and cease to be a principle that is universally applied, the Scottish justice system will be fatally undermined.

In England and Wales, informed commentators have made clear that Whitehall has exerted pressure to block enquiries and the prosecution of crimes committed by the main UK banks and their senior executives and senior managers. Until D.S. Whittle made his remarks I had assumed this was not the case in Scotland.

The Tomlinson Report, published in November 2013 highlighted widespread malpractice by the RBS's global restructuring group – also referred to as its “vampire unit”. The report made clear that GRG influenced the decisions of the companies and businesses under its control and acted as shadow directors to ensure that the companies' finances were secured for the sole benefit of the bank and not the creditors, shareholders or owners of these businesses (see attached excerpt). I believe that such conduct is criminal and fraudulent and that the perpetrators must be brought to justice.

Iceland has shown the way in dealing with criminal bankers. If that country has the legal expertise to prosecute, it is barely credible that in Scotland, with its a proud history of producing world-renowned experts in many fields, the Crown Office cannot engage expert legal minds well acquainted with banking and fraud to prosecute. Perhaps it is so incompetent that it cannot understand the nature of the alleged criminality committed by RBS. I and many of my fellow victims have spoken with a number of eminent English based Queens Counsel, some of whom have provided opinions to support the allegations of the fraud committed by RBS in particular. Yet the Crown Office point blank refuses to respond to the submissions with evidence provided to it.

The wilful blindness displayed by the BBC in the Savile enquiry ought to serve as a wake up call to all in positions of influence. In a different, but equally devastating manner, governments, police and prosecutors are turning a blind eye to historical and continuing fraudulent conduct of the banks.

I fully accept your position, outlined to Ian Fraser that it would be inappropriate for you to intervene in independent police and prosecutor's enquiries. However, it has now reached the stage where a section of society appears to have been granted immunity from prosecution for crimes it has committed and continues to commit.

I just pose this question to you – do you wish to preside over a country where the law favours a select few to the severe detriment of the many? Do you not recognise that if allowed to persist, such a situation can only lead to anarchy and unrest?

One only need to learn the historical lesson from the French Revolution of 1789 and its cause; being the elites out of touch with the majority. The French stood up to a gross abuse of power. This country does not have a history of such rebellious events; however tens, if not hundreds of thousands of SME businesses have been crippled by the criminality of bankers. Millions have been forced into hardship as a consequence of the havoc wrought by the bankers and the billions of pounds required to support the banks. Yet the perpetrators escaped any censure and continue their reckless conduct with seeming impunity. Those in the Westminster bubble appear ignorant of reality. One might have hoped for better from the politicians in Holyrood.

The perception is that you ignore and condone law-breaking by bankers, and this does your administration very few favours. I would respectfully suggest that you have a golden opportunity to address this by following Iceland's lead and indicating that you favour a levelling of the judicial playing field – by issuing a clear, concise statement that your government will no longer tolerate COPFS's apparent granting of immunity to banks for their criminal behaviour and unwarranted persecution of SMEs. That way, I believe you could gain the respect of the vast majority of the UK's 64.1 million residents. You may care to include the fact that there is clear evidence and impartial legal opinion supporting the

allegations of the banks' fraudulent activities. I and many of my colleagues would be more than willing to meet and share our files with you.

Should the Crown Office persist with its refusal to allow the police to investigate alleged crimes committed by banks and bankers, I and my fellow victims will have no choice other than to follow the legal advice that we have been given and pursue them privately through the criminal courts.

There could be no clearer evidence of hypocrisy in this country, and from you as first minister, were you to continue to assure the electorate that your government is committed to social justice, at the same time as your government is presiding over a two tier justice system in which bankers are above the law. Such a situation would be in direct contradiction to the motto that adorns every courtroom in Scotland assuring citizens that we are all subject to the law and equal in its eyes.

Yours sincerely

**NIGEL K HENDERSON**

### c. Shadow Directors

The decisions made by the bank and IBR whilst the business is in GRG can have detrimental impacts on the business' ability to operate effectively as a business. As these divisions of the bank are supposed to be turnaround divisions, their focus should be on helping the business to improve their performance and not become a zombie business. Concerns should arise when a part of the bank which is supposed to be helping the business to improve performance is in fact actively making business operations impossible.

It is vital the business is given the opportunity to trade out of their difficulties, where this does not detriment their ability to uphold their agreements with the bank. If the bank is not going to lose money - i.e. the business is able to keep up with their repayments, and there is no other justifiable reason to prevent the business from taking action to turnaround - it is hard not to suspect that the bank does not have the businesses best interest at heart when they refuse such actions.

Evidence provided by businesses suggests that the bank has actively prevented some businesses from taking action which would prevent the business from going into default or would pay off the debt.

A regular complaint received is the direction for businesses to delay or stop paying their suppliers. This has a knock on effect of damaging the business' credit rating and relationship with supplier who may also be distressed by the delay in payment. If the business is unable to pay their suppliers, then they are unable to maintain normal business operation, their productivity drops and they have less products and services to sell. The outcome is likely to be that the business will end up in a distressed position. It also has a knock on effect on the viability of the whole supply chain that will have outstanding invoices, potentially losing clients and putting them at risk of breaching their own financial commitments. Considering that RBS and Lloyds have 60-65% of the market share in business lending, it is likely that they will be financing at least part of the very supply chain that they are distressing.

It is important to keep front of mind that GRG is meant to be a turnaround division, a part of the bank in which a business who is struggling, or has become a 'zombie business' is helped to reinvigorate the business. If, as the evidence suggests, GRG is actually designed to be a profit making centre for the bank, then it is not a turnaround division and the message to the customer is misleading.

It is also worth noting that evidence has been received that suggests businesses are being directed by the banks and IBRs not to pay HMRC when in GRG. When taken in the context of the Enterprise Act 2002 and the removal of Crown preference in insolvency, the impact of this on HMRC is significant. HMRC sits behind the bank in insolvency and is unlikely to collect this money owed to them from the insolvency pot, if that is where the business ends up.