HOUSE OF COMMONS

Public Accounts Committee

Oral evidence: British Steel Pension Scheme (Postpanel), HC 251

Monday 13 June 2022

Ordered by the House of Commons to be published on 13 June 2022.

Watch the meeting

Members present: Dame Meg Hillier (Chair); Sir Geoffrey Clifton-Brown; Peter Grant; Sarah Olney; Angela Richardson; Nick Smith; James Wild.

Gareth Davies, Comptroller & Auditor General, National Audit Office, Adrian Jenner, Director of Parliamentary Relations, and Marius Gallaher, Alternate Treasury Officer of Accounts, were in attendance.

Questions 1 - 68

Witness

I: Andrew Bailey, Governor, Bank of England, and former Chief Executive, the FCA.

HOUSE OF COMMONS

Report by the Comptroller and Auditor General

Investigation into the British Steel Pension Scheme (HC 1145)

Examination of witness

Witness: Andrew Bailey.

Chair: Welcome to the Public Accounts Committee on Monday 13 June 2022. Today we have two panels. The first session is a follow-up on our inquiry into the British Steel pension scheme, and the second will be looking at regulation after EU exit.

For the first panel we have only one guest today, who is Andrew Bailey, the former chief executive of the Financial Conduct Authority; he is better known to people as the current Governor of the Bank of England. I should make it absolutely clear that we are questioning Mr Bailey in his capacity as the former chief executive of the Financial Conduct Authority and not as the Governor of the Bank of England. Due to long-standing protocols, he would be anyway unable to comment on a number of issues that we would want to talk to him about, such as interest rates and so on. He is not here in that capacity today. It does seem a bit counterintuitive, but that is the situation.

We are keen to ask him questions about how, at his time at the FCA, the British Steel pension scheme was managed. Some bad advice was given to British Steel pension scheme members, and a number of them have lost out financially as a result. We are here to probe him on the work of the FCA under his leadership.

I will introduce the officials on the second panel when we have a short procedural break to move on to the issue of regulation in the European Union.

I would like to welcome you, Andrew Bailey, to the Committee. You may have picked up on what we discussed in our previous hearing. I am sure you are well briefed on all of that.

Q1 **Nick Smith:** Good afternoon, Mr Bailey. At our last hearing in April, I told the story of my constituent and his wife, who, after finding out they were victims of this scandal, said it had spoiled the rest of their lives. Nearly five years later, the FCA has still to grip this painful saga. Many steelworkers have not had justice. Mr Bailey, on your watch, between 2017 and 2020, how did the Financial Conduct Authority handle the BSPS case?

Andrew Bailey: I will take this in two parts, if you do not mind. There is the part that I can comment on, which leads up to the "time to choose" period for the British Steel pension fund members. I should say at the start that I remember the story about your constituent and his wife. My colleague Megan Butler met them when they were in south Wales. All our concern must be to get the right outcomes for the British Steel pension fund members. That is critical. I can honestly say that there has never been any other primary objective for the FCA, certainly in my time, than that.

It is important to have the period leading up to November 2017, when the "time to choose" exercise began, and the period during the "time to choose" exercise. I am afraid I can say much less about the period after the "time to choose" exercise for two reasons, one of which is that, certainly in my time, there were 30 investigations going on. Those may well still be going on. That is a question the FCA can answer, but there are a lot of confidentiality restrictions around pending investigations. Certainly, I have not been there for two and a quarter years, so I cannot comment on anything that is—

Q2 **Nick Smith:** Mr Bailey, I have been listening to the FCA say that there are all these enforcement cases going on for a long time now. Can you please answer the question?

Andrew Bailey: Yes. Let me start with the period before "time to choose". The FCA does an annual business plan. During the annual business plans, certainly the 2017 annual business plan, which was my first, pensions were a priority. That was not just pension transfers; there were also quite a few other parts of the pensions landscape. I will not comment on those, because they are other parts of that world, but they are important in terms of the choice of priorities.

Pension transfers were a priority. The FCA issued new guidance and an alert to firms in January 2017 setting out what it expected of firms. I am sure you will be familiar with this.

Nick Smith: I remember our meeting.

Andrew Bailey: Yes. The important point I would draw out there was the stress—I am going to come back to this in a moment—on the fact that it had to be individually tailored advice; it could not be generic advice. Each piece of advice had to be individually tailored to the circumstances of the person. Critically—I am going to come back to this—it also had to be benchmarked against the continued defined benefit scheme, which had a guaranteed income stream attached to it, albeit that was restructured in the case of British Steel.

The next priority for the FCA during this period before "time to choose" was to identify and follow up firms that we regarded as high risk and subject them to enhanced supervision, to put our supervision resource there. I should say—and it is well known—that the FCA that I inherited had a supervision model that was very inadequate. We had difficult choices to make, but this was a priority within that.

We identified a number of firms from that, and action was taken. One of those was a firm that you and I have corresponded on in the past and that is well known. To give you an example, that firm was restricted in the business it could do from July 2017 and had further restrictions put on it early on in the "time to choose" period.

Q3 **Nick Smith:** We will come on to that case later. It is good that you are giving us some context, but I am trying to tease out from you how well you think the FCA did during that period from 2017 to 2020 in handling the BSPS case.

Andrew Bailey: I know we are short of time. When we come to "time to choose", you will be aware of the protocol we published about a year later with the Pensions Regulator and TPAS—the Pensions Advisory Service. That really arose out of my concerns—you and I have discussed this in the past—about the access to information at the beginning of the "time to choose" period.

We found it very difficult to get that information. As I hope you know—I am happy to take you through the actions we did take—from the beginning of November when the "time to choose" exercise—

Q4 **Nick Smith:** We will come on to a lot of the actions you took and your communications later. I am just trying to get a general understanding of how you thought the FCA handled this case. What is your headline position, please?

Andrew Bailey: A lot of work was done. There were results from that work. By the beginning of January 2018, 10 firms had withdrawn from the market because of FCA interventions. We had done sessions with advisers in both locations. Can I stress that? I know Ms Hann said to the Committee that we never went to the north of England. That is not true. We did. We went on 28 November. We did Wales on 21 November. We went to Doncaster, where we based those presentations, on 28 November. We sent our staff to the offices of the administrator to get the information, because they were having such problems extracting the information. We did a lot of things.

Q5 **Nick Smith:** Mr Bailey, my question to you is a high-level one. How effective was the FCA at that time in supporting British Steel steelworkers and their families?

Andrew Bailey: The reason I am answering it like this, to be clear, is that there were substantial difficulties in what could be done. I will pick out two. I have just mentioned one of them, which is access. Had we had access to the information earlier, we would have been able to intervene earlier and the TPAS hotline would have been set up earlier. That would have made a difference.

The second thing I am going to say is this. It is quite interesting. If you go to the report that Caroline Rookes produced— **Nick Smith:** We will come on to that bit later.

Andrew Bailey: Can I just quote one thing from it? The Community union did a survey—I think it was in late November of 2017—in which they asked around about 400 members what they thought about the advice they were getting from their financial adviser. About 83% said they were happy.

I do not say that because that was correct, because we now know that 46% of advice was unsuitable. The reason I raise this point is this: the reason we got to the conclusion that 46% of advice was unsuitable was because we had to do the file reviews. You can only do the files reviews when you have the evidence. I say that simply to say that the FCA did a lot of work. The protocol indicates what we think should have gone much better and did not. I would push back on the suggestion that some people have made that the FCA did not do anything. That is not true.

Nick Smith: I have not said that.

Andrew Bailey: No, I know you have not, but others have.

Nick Smith: I tried to give you the opportunity to come back with your broad brush on things, but we can go into the detail you talked about.

Andrew Bailey: My broad brush is a lot of things—

Q6 **Nick Smith:** Let me ask the question, if I could. I have another more broad-brush question, but it is related to the FCA. What are your thoughts on consumer protection in financial services? You left the FCA a short while ago now. How well did the FCA's key partner, the Financial Services Consumer Panel, engage with the BSPS case from 2017?

Andrew Bailey: The consumer panel is more engaged on policy making than individual cases. The panel is generally engaged more on policy making. That is their role. If you take some of the policy issues that underpin that, such as charging, the question of what general attitude the FCA took to the question of pension transfers in the guidance we have, they engaged on that.

Q7 **Nick Smith:** In the round, what are your thoughts on consumer protection in financial services? How well has that gone?

Andrew Bailey: It is a constant challenge, if you do not mind me saying so. I say that because the world evolves around us constantly. The FCA has done a lot.

Chair: We get the picture.

Andrew Bailey: There will always be a lot to do on that front.

Q8 **Nick Smith:** Mr Bailey, I am looking for specific concerns and your experience, having been head of the FCA, on behalf of consumers across the UK. I am looking for your insights. We just need to try to concentrate and—

Andrew Bailey: Let me explain. The case we are looking at today—I have said this publicly—involves the most complex piece of financial advice anybody can take. To transfer a defined benefit pension into a defined contribution pension is the most complex piece of advice people can take. You have to form a view on your expected longevity, the discount rate during the rest of your life and your future earnings potential. Those are complex things. There is evidence of much improved advice, but in the early days of the freedoms that was not the case.

Q9 **Nick Smith:** I am sure you would agree that these steelworkers and their families were vulnerable consumers.

Andrew Bailey: Yes, they were, because the scheme had to be pushed through quickly. I have to say that, if one had one's choice, the answer to this would have been that they should not have done that transfer scheme as quickly as they did, because they were not prepared for it. There was not a choice. You and I have discussed this. There was no choice.

Q10 **Nick Smith:** You have introduced my question, really. Chair, I want to look at the introduction of pension freedoms in the George Osborne chancellorship and the FCA's involvement with that. The fantastic Report from the NAO says that in 2015 the FCA, under you, Mr Bailey—

Andrew Bailey: I was not there in 2015. I am sorry; that is not true.

Q11 **Nick Smith:** The FCA was concerned about these changes and the risk of harm for DB pensioners. When you got this FCA job, what dialogue did you have with the Treasury at the time to raise your concerns, given your fair remarks about—

Andrew Bailey: I referred to the 2017 business plan. As you probably know, I arrived at the FCA on 1 July 2016. The business plan is always done by the end of the year, so it was one of the first things—

Q12 **Nick Smith:** Did you raise your concerns with the Treasury?

Andrew Bailey: I am on record as having said that I think they were introduced too quickly, but it was done by then; we had to deal with the situation we had. That is why, as the interim CEO Tracey McDermott had also done, we prioritised pensions as one of the FCA's priorities for the business plan, because it was clear that there were serious issues.

Q13 **Nick Smith:** The FCA told our NAO that it had limited time to prepare the advice market for the new legislation. Were the Government rushing you when you needed more time? What was going on?

Andrew Bailey: You are talking about Martin Wheatley's time there. I can comment on what I know Martin thought at the time.

Q14 **Nick Smith:** You were the chief of the FCA. You could have pushed back to the Treasury.

Andrew Bailey: No, it was all done by then. We are talking slightly at cross purposes here, Mr Smith. The introduction of the pension freedoms was done during Martin Wheatley's time. By the time I came to be chief executive, it was done. I can talk about, in my time, what I inherited in terms of an operating system. I can tell you that Martin, during the time of the introduction of the pension freedoms, did raise concerns with the Treasury about the speed and difficulty of it, but that was not in my time.

Q15 **Nick Smith:** Let us go to the operations under you at the FCA for that period. By the end of January 2018, only 2,000 transfers had taken place. That was the same month that you gave written evidence to the Work and Pensions Select Committee, which was very critical of the FCA at the time. You did a lengthy, and I think defensive, letter, in which you talked about the FCA's actions. Three times as many people continued to transfer out after that. What went wrong?

Andrew Bailey: That was the point at which the Pensions Regulator, with the FCA and TPAS, had written to each person who was transferring, setting out what their options were. The TPAS hotline had been set up for the pensioners so they could talk to the Pensions Advisory Service. We did all we could to provide those who were still in the pipeline with options.

Q16 **Nick Smith:** One of the things I am trying to get my head around is the fact that, while the mis-selling was going on, the FCA was consulting on removing its guidance that advisers should assume that in most cases a transfer will not be suitable. The DWP Select Committee, I am sure you will remember, called this dropping of the safeguard "reckless." Did that send a mixed message to IFAs and steelworkers at the worst possible time?

Andrew Bailey: As you know, we did not drop it.

Q17 **Nick Smith:** You did consult on it, did you not?

Andrew Bailey: Yes, and I will explain why. It was for two reasons.

Nick Smith: Do you think that was a mixed message?

Andrew Bailey: Let me explain why. The concern we had was—this comes out in the guidance we issued in January 2017—we were trying to emphasise the safeguards that advisers needed to make in making the positive choice. In other words, they had to put guardrails around the positive choice process that the pension freedoms had introduced.

The question for us, embodied in that consultation, was whether it was better to frame the FCA's guidance in terms of those guardrails and say, "You can do this, but you have to be very careful", or to maintain the position, which was to say, "In most cases, do not even think about it." The position of, "You should think very carefully, and this is how you should think about it", is, first, consistent with the pension freedoms, and, secondly, was trying to put the guardrails around the choice process itself, which was a constructive approach to take.

We did not go there, because in the end we felt that the evidence supported the fact that we just had to continue, as you say, with a position that said, "For most people, this is not suitable."

Q18 **Nick Smith:** Three times as many people then transferred out from BSPS.

Andrew Bailey: Yes, they did. We should think about why they did.

Q19 **Nick Smith:** We can talk about that shortly. It is a fair point.

I want to talk about contingency charging now, please. I am sure you will agree, Mr Bailey, that another driver for transferring out was contingent charging. Firms and advisers were financially rewarded if they recommended that steelworkers transferred their pensions out. Again, the Work and Pensions Select Committee recommended a ban on contingent charging in January 2018, so well within your orbit. Why did you not consult straightaway on a contingent charging ban?

Andrew Bailey: We had to work out what would be a better approach than that, and that was not obvious at the time. It became obvious later, and I will come on to that. The evidence suggested that taking the simple approach of saying, "Do not do contingent charging; just charge over the lifetime of the contract", led to much higher charges. The idea of charging everybody whether you transfer out or not would have had the effect of killing the pension freedoms. Let us put it that way.

The problem did solve itself when workplace pensions were introduced. They had a charging structure attached to them, which was frankly, in our view, reasonable. We adopted that change when it came into effect, because we were looking for the reasonable and sensible alternative to contingent charging. That was it.

Q20 **Nick Smith:** You did not find a sensible approach, and then the FCA did consult on a ban but not until July 2019, 18 months later.

Andrew Bailey: I noticed that at the hearing even Philippa Hann agreed that was not a stupid thing to do.

Q21 **Nick Smith:** Do you think the horse had bolted by then?

Andrew Bailey: I and my colleagues were never particular supporters of contingent charging. We were looking for a better method, because we could see alternatives that were just as bad.

Q22 **Nick Smith:** The facts are that it did not come into force for another 15 months, in a period when the NAO says 60% of firms were using contingent charging in pension transfers.

Andrew Bailey: The problem was that we were looking at the wider market as well. Frankly, the evidence in the wider market was that the alternative forms of charging were associated with mis-selling as well.

Q23 **Nick Smith:** Can I come on to communications and redress? The Rookes review in January 2019 highlighted problems with steelworker communications. The FCA did these sessions in south Wales and the north of England, but in general there was distrust from many steelworkers with official bodies and Tata itself, which fuelled the mis-selling. That definitely occurred. What did the FCA do? Did it do enough to address this extraordinary situation?

Andrew Bailey: I agree with you. This whole problem would have been much smaller and easier to deal with if there had been better access to the information. We would have been able to act sooner. The problem was the records were in no fit state.

As you know—we have discussed this in the past—we could not get access to the information that would tell us which firms were providing the advice. I am not blaming the administrator for that, because they did not have much warning about what was going to happen; they were overwhelmed in the "time to choose" period. We solved it by sending our own staff to Glasgow, to the administrator's office, to get the information out. It took some extra time to get to the point when they could go there. It was not until right at the end of November. We went twice; we went at the end of November and then in the first week of December or something like that. Our staff sat in the offices and extracted the information. That put us in a better position.

Where did that have an effect? Think about the letter that was sent to the steelworkers, to the members. To send those letters, you have to know who you are sending them to. It delayed that type of process.

Q24 **Nick Smith:** I remember thinking, "This is taking forever to take forward. Come on. Just pull up and get on with it."

Andrew Bailey: I had to send our own staff there to get this information.

Q25 **Nick Smith:** Sometimes extraordinary problems need extraordinary responses.

Andrew Bailey: We did not complain about doing that, but it meant we had to do it.

Q26 **Nick Smith:** I know and it is good, but you should have got on with it earlier, in my view.

Andrew Bailey: We had to get access to it first of all, if you do not mind.

Q27 **Nick Smith:** Alarm bells went off in 2018, but now after four years still—

Andrew Bailey: It was 2017, actually; it was the end of 2017.

Q28 **Nick Smith:** I am talking about the alarm bells—all that terrible coverage in the *Financial Times* and all the other broadsheets about financial shocks and all the rest of it. Now, after four years, just one in four steelworkers have sought redress. There is a very low take-up and complaints rate. Why did the FCA keep to the complaints-based approach that it used then?

Andrew Bailey: I cannot comment on what has happened in the last two and a quarter years, because it is since my time.

Q29 **Nick Smith:** I am talking about the complaints-based approach, which the FCA had through that whole period, when you were there.

Andrew Bailey: What I would say about that period is that we had to do the work to establish exactly what the position was in terms of the unsuitable advice. We could only do that by doing the intensive file reviews.

Q30 **Nick Smith:** It was pretty clear that there were very small numbers of steelworkers coming forward and complaining, was it not? There were very small numbers.

Andrew Bailey: Yes. My supposition on the reason for that is as follows. People often think that unsuitable advice is about recommending unsuitable assets. Some of it was, but a bigger amount of it was to do with the fact that, at the heart of this, you have to advise on the benchmark of the continuing DB scheme versus the alternative of the transfer into a defined contribution investment alternative. It is that relative judgment that guides the outcome.

I suspect—and it would be entirely fair for them to take this view; you are closer to this than I am—that many of the steelworkers and pension fund members felt very unhappy about Tata Steel, the way this had been handled and the alternatives. That is relevant, because the DB benchmark is based on saying, "You have an assured permanent income stream." If you say, "Have I? I do not trust Tata", that clouds the judgment of the comparison, even though our view is, "No, that is the stated contractual position."

Q31 **Nick Smith:** I agree with you. It is fair to say that people were suspicious of Tata and its approach at the time, and they were not sure about the way forward. I am trying to understand your time at the FCA, so let me ask my question.

Andrew Bailey: The reason I am saying this is important is because we had to do the file reviews to get to the bottom and say, "Yes, but this is what the financial comparison should be."

Q32 **Nick Smith:** We did know that at the time. I remember talking to you about how difficult this was and how we really needed to persuade people and take extraordinary measures to gain their trust and to get them to complain so they could get fair compensation. British Steel pension members faced considerable delays and inconsistent compensation through the period that they were trying to seek redress. Was that fair?

Andrew Bailey: It is unfair that the British Steel pensioners have been put in this position. Do not get me wrong. I am with you on that; I always have been. What I would push back on is the idea that the FCA was wrong to do the frankly very technically detailed file review work to get to the bottom of exactly what the position should be so that the compensation arrangements could be more robust. That is my point.

Q33 **Nick Smith:** Mr Bailey, can we talk about enforcement? There was a lack of enforcement by the FCA. Early on, in the financial press and others, there were reports of pension sharks ripping off steelworkers. You will remember it, I am sure. It was in newspaper cuttings every day. At the

FCA, you would have thought, "Blimey, what is going on here?" Did you put enough resources into investigating all of this when you were at the FCA?

Andrew Bailey: Let us go back to what I was saying. We had a programme of work from early 2017 targeted on the transfer market as a whole.

Q34 **Nick Smith:** Did you put in enough enforcement support and capacity in to deal with the financial sharks that were ripping off steelworkers in 2017 and 2018?

Andrew Bailey: Let me say this. We acted on several of the firms, but we acted on one of the firms that many of those articles were about. The first action we took was in July 2017. The second action we took was in November 2017. We were not late in terms of British Steel in that respect.

What I have to say to you, though, is that one of the things that was even more clear then at the FCA—it is still the case at the FCA—is that the FCA has a huge landscape that it is operating on. There are 60,000 authorised firms. You have to make choices. You have to make choices about where you put your resources. You have to make choices about where you put your supervision resources and your enforcement cases. In my time, we were running 400 or 500 enforcement investigations at any one point in time. We had other big pension issues on our hands. The SIPP pension issue was even bigger.

There are relative judgments here, and I do not pretend otherwise. We should be straightforward about this. We had to make relative judgments. Could we have put more resources onto British Steel? Yes, but something else would have lost resources as a result.

Q35 **Chair:** Could you not just have done more warnings to those British Steel pension scheme members who were looking to transfer out to be more cautious?

Andrew Bailey: We issued a general warning in January 2017.

Q36 **Chair:** You issued a general warning. To be fair, Mr Bailey, we all know there are many consumers, even those going through a process like this, who would not necessarily pick up on the FCA issuing a warning. They are not necessarily reading—

Andrew Bailey: I agree with you on that. I would come back to you in this way. If you are asking me—this is reflected in the protocol—"What would you have liked to have done?" yes, if we had had the information earlier, we could have dealt with it. We would have got the targeted warnings out much earlier, yes.

Q37 **Chair:** You acknowledge that you would have got it out earlier.

Andrew Bailey: This is the point we have just been discussing about the difficulty of getting the information, which is in the NAO Report.

Chair: Yes. I should just reiterate that we have the NAO Report, so we do not need to go into the detail of that. We can refer to it without repeating it.

Andrew Bailey: Please do not think that the FCA was sitting on information and not doing anything with it. That is my point. That was not the case.

Q38 **Chair:** It is not that you were sitting on information, but the scenario was going to be a riskier one because of a concentration of people who had never had to make these decisions before in a situation where there was distrust of the company that had taken over their employer. Did red flags not go up that you maybe needed to give more direction and warning at that point?

Andrew Bailey: That is why we switched our resources on to British Steel in the autumn of 2017. They went from the general transfer market work to British Steel.

Q39 **Nick Smith:** You did say that you had other priorities, and of course you were running a complex organisation at the time. Is it acceptable that only one fine has been issued five years on?

Andrew Bailey: I cannot comment on that. Certainly in my time there were 30 investigations going on. Those investigations, necessarily, for legal reasons, are not public. I cannot comment on where any of those have got to, because I am two and a bit years out of date. That is a question for the current management of the FCA, not for me.

Q40 **Nick Smith:** I will ask you again. Is it acceptable that only one fine has been issued five years into this?

Andrew Bailey: Mr Smith, the reason I cannot comment is that I do not know the complexity of the investigations. I am not involved in them. I have not been for over two years. I cannot comment on where they have got to, why they have got to where they have got to and not got to other places. I just cannot do that.

Q41 **Nick Smith:** I just want to take a deeper dive on one of the most badly behaved scoundrels in all of this. I want to raise a judgment, after your time at the FCA, that came through in May 2021 from the Business Secretary relating to an introducer, Active Wealth, which I know you will be familiar with. It details the millions paid to someone called Darren Reynolds for investing pensions in particular funds. In the 35 pages of the report, there are references to introducer fees, back-end fees, bonuses, commissions, intermediation commissions and marketing fees. There were multiple ways to rip off steel pensioners. There is evidence—Mr Bailey has referred to it already—that Active Wealth was on the FCA's radar for bad behaviour in 2017. Did the FCA look to recover money from that particular individual?

Andrew Bailey: I am sorry. I can give you the history of the FCA's dealings with Active Wealth through to the end of 2017. The firm was restricted from advising on high-risk investments in July 2017. It stopped providing any advice in November under an agreement that we reached with them, which is called a voluntary restriction. That is the fastest way of getting a restriction. The firm went out of business in the first few months of 2018.

What I cannot do, I am afraid, Mr Smith, is comment on whether Active Wealth is one of those 30 investigations and what is happening to it. Again, that is something that cannot be done due to the way investigations are run.

Q42 **Nick Smith:** This comes to my wider point. The FCA's approach, Mr Bailey, seems to be more about professional penalties than prosecutions. Did you take this case to the police at the time?

Andrew Bailey: Mr Smith, I cannot comment on the case. It may or may not be one of the investigations. I am afraid that is a public law point. I just cannot comment on it.

Chair: No, that is fine. We understand.

Q43 **Nick Smith:** Every time I have spoken to someone from the FCA, I keep getting told that there are 30 cases in the pipeline: "Just you wait, Mr Smith. There will be proper enforcement of these scoundrels." Does it happen? It does not.

Andrew Bailey: I do not know, because I am not involved.

Chair: We can always call in the current leadership of the FCA.

Andrew Bailey: Yes, that is not a question I can answer. I can tell you what happened in 2017.

Q44 **Nick Smith:** There are just two quick points from me. Mr Bailey, at the end of your tenure there was also the London Capital & Finance mini-bond debacle. The independent report on that found significant gaps in the FCA's policies and in the FCA's use of its powers. The report thought the FCA was too cautious. To me, that sounds all too similar to this scandal. Under your leadership, did the FCA really protect consumers from financial sharks?

Andrew Bailey: I have just given you the example of Active Wealth. In 2017, the FCA twice used the faster power we have, which was to say to the firm, "Adopt a voluntary restriction that takes you out of the market." The reason that is the fastest power is because you then do not have to go through a legal process. You get the firm to take itself out. I cannot comment on what you do subsequently.

I am afraid I would push back on not using the powers. Where I would draw the distinction—if you have not read it, you should read the PA Consulting report that was done around the time I started at the FCA on the issues with the supervision model we inherited and the issues with access to information—is in the contrast between mini-bonds and pension transfers. We did have pension transfers as a priority. We did do things—I have given you some examples; I will give you more if you want—and actions were taken. That will have had an effect. We were able to take 10 firms out of the market by January 2018. That does not happen without a lot of work.

Q45 **Nick Smith:** It might have been too little, too late. There is one final question from me. Mr Bailey, in the current cost of living crisis, are consumers adequately protected from harm within the regulated financial markets? What have you learnt from your period at the FCA?

Andrew Bailey: I learnt a huge amount during my period at the FCA. It is a very complex organisation. It is a very important organisation. It is operating on a very big landscape. I always say that one of the big differences with the prudential regulation of banks and insurers, which I have been involved in for much longer, is that the FCA has to make a lot more choices about its priorities. In prudential bank regulation, you broadly have a model and you do it every year.

In the FCA's model, you have a very big landscape. You have 60,000 firms. You have to choose where you put your priorities on the board, as it were. We did that with the business plans every year. It is hard to convey the message that there is this prioritisation and you are not going to cover everything equally. If Parliament wants a model where everything is covered equally, it is a very different system to the one we have today, and it is a much more expensive system.

Q46 **Nick Smith:** Can I make just one comment on that answer? When we had your successor and colleagues from the FCA in last month, one of the points they made was that the FCA was facing in this case—I suspect it is the case in other bits of the financial sector as well—the big companies, not the long tail of small companies around the country. It is the small countries around the country where we unfortunately saw bad deeds being done to steelworkers. How well did the FCA manage those relationships and enforce actions in those cases?

Andrew Bailey: That is a very important point, and you are right. Let me explain. Under the model that I inherited, there were 50,000-odd firms; it has grown since then, but that does not matter. Of those 50,000, just over 100 were large firms, which had their own dedicated supervisors. A little bit under 59,900 did not.

Under the model I inherited, which was the original model set up in 2013, if my memory is correct, the plan was that there would be a "touch point" with small firms once every three years. I will be honest with you, and I have said this before in other hearings: you cannot know what is going on, if that is the model. In my time—Nikhil has taken this further—we worked to build a model that corrects for that. You are right to point to the fact that, with a preponderance of small firms, that model does not deliver you the oversight. That is a key point.

Q47 **Nick Smith:** Given that you cannot even deliver a touch point, are consumers adequately protected from harm within the market at the moment?

Andrew Bailey: Do not take this as a point about me. I will say it about Nikhil as well, because he is a very good regulator. They are much better protected than they were going back in time. I have no doubt about that. None of us can give you guarantees that everything is going to be taken care of.

Q48 **Peter Grant:** Mr Bailey, I want to follow up on the question as to whether the Financial Conduct Authority has the legislative powers and resources to give the degree of protection that consumers need. It strikes me that, if I broke into a wealthy person's house and made off with £1 million of money and jewellery, the police would find the resources to come and get me, especially when they had information to identify me as a culprit. If I were to set up a business and clean out innocent people of £100 million, it seems as if I would not get the same priority. That is certainly the feeling I get from constituents who have been scammed.

I want to look briefly at another one that happened at about the same time as the ones that Mr Smith mentioned, which was Blackmore Bond. They took down £46 million of other people's money. Some £26 million of that was taken from investors after the Financial Conduct Authority had alerted on numerous occasions by a very well-informed City whistleblower about exactly what was going on. He even offered to show them where they could get recordings of criminal activities taking place.

What was it that caused the Financial Conduct Authority to take so long to react that £26 million more was lost? Was it that you did not have the powers to act quickly, that you had the powers but not the resources or that you had the powers and the resources but just got it wrong in relation to that case?

Andrew Bailey: I cannot comment on any individual cases.

Chair: We appreciate that.

Andrew Bailey: I can say that, when you are an investigating authority, one of the necessary things is that you have to meet the legal test for bringing cases to a head. That often involves a very long period of investigation, necessarily. I can tell you that the FCA does not lose many cases, certainly not in my time. It has not in Nikhil's time either.

You always face a trade-off. As chief executive, I can tell you that you always face a trade-off. My former colleagues will remember me saying this. You always want the cases to go faster, but you do not want to muck these cases up and lose them. No good comes of that, I can assure you. That is why these cases often take a very long time. There are cases that take years. I share your view. People in the FCA have heard me say this: "How can we sit here and feel comfortable with this thing going on while we are trying to make the case?" The answer that comes back is, "If you want to land this case, this is what we have to do."

Q49 **Peter Grant:** Is there more that Parliament could do to prevent these cases from getting to the stage where enforcement is necessary?

Andrew Bailey: It is a hard question. I am not a lawyer, so I am not the best person to comment on this. There is always a balance in terms of bringing a case. I strongly support having a legal system that protects people's rights. Everybody has rights.

I would go back to Mr Smith's question and the firm he was talking about. In October 2017, when the case was building further, I remember that their lawyers sent us 40 pages of legal rebuttal. You have to go through every argument and rebut it. That is what you have to do as an investigative authority.

Q50 **Peter Grant:** Finally from me, looking at the legislation that has been announced in the Queen's Speech, in particular the background information to the proposed Financial Services and Markets Bill, one of the intentions is to update the objective of the financial services regulators, presumably including the FCA, to give a greater focus on growth and international competitiveness. From your time at the FCA, is it compatible for an organisation that is charged with protecting small consumers also to be charged with encouraging companies?

Andrew Bailey: I can safely predict to you that this is going to be quite a big area of debate around the Bill that is going to be introduced. Can I put my other hat on very briefly? I will not talk about monetary policy. It will be an issue for the Bank of England as well, because this is a common issue for both the FCA and the Bank of England. There was a competitiveness objective in the pre-2009-10 system, the FSA system. That did not end well.

It is possible to construct an objective that has a degree of international competitiveness in it and that is safe. Frankly, getting that is going to be a very important issue in this legislation. I would imagine this will be the subject of further—

Q51 **Peter Grant:** Are there likely to be regular instances where the two objectives are incompatible? The encouragement of growth and innovation part of the FCA might want to do something, but the consumer protection part says, "We cannot do that." You have already mentioned one case.

Andrew Bailey: I will give you a current example. I am on record, going back to my time at the FCA, as saying that unbacked crypto-assets have no intrinsic value. I have said that publicly.

By the way, I chose to do this in late 2018 as CEO of the FCA because my concern was that this was another problem waiting to happen. I made a rather stark statement. I said, "If you want to invest in these assets, okay, but be prepared to lose all your money." People may still want to buy them, because they have extrinsic value. Some of us collect things. I do not myself, but people value things for personal reasons. They do not have intrinsic value.

This morning we have seen another blow-up in a US crypto exchange. I have to say that we have issued warnings for some years over this. There is a lot of investment going on. I am not sure how big it is. As Governor of the Bank of England, I spend a lot of time going around the country. I go to schools. I am sometimes amazed by how many students invest in crypto.

Q52 **Chair:** With your FCA hat on, or maybe with your Bank of England hat on, we have a Bill going through Parliament to regulate what goes out on social media. Does it strike you as a bit of an anomaly that Facebook, Twitter and those companies can advertise cryptocurrencies with no warning and no comeback?

Andrew Bailey: Yes is the simple answer to that. Let me make a general point there. We are making progress on that front. It started in my time, and we are still making progress. We have moved from the traditional media world in which a newspaper is responsible for what it publishes. That is not the case now, in the sense that the legal restrictions on these big platforms are not the same.

There have been a lot of discussions with Facebook, Google, Twitter and so on to say that this is leading to unacceptable harm, but it is still a big challenge. I welcome the fact that the Online Safety Bill is now moving in that direction. It has been a long haul, though.

Q53 **Chair:** As a Committee, we have previously looked at what banks do when fraud is perpetrated. We have been critical of banks not publishing data on fraud. We have pushed for improvements on that. Banks are often having to pay back money, and sometimes it is due to crypto fraud. Where would you say the balance is now? Is it in the right place? You seem to be indicating that it is a bit harder on the banks than it is on the— ***Andrew Bailey:*** The banks are now taking responsibility.

Chair: They are not the ones advertising the crypto-assets.

Andrew Bailey: No, they are not. They are not in that world. In the bank world, there is more push-payment fraud and that sort of thing. They will say—they are right—that there are a lot of bad actors out there creating it. The question is how you make the judgments as to where the responsibility lies. Generally, over the years we have pushed it towards the banks, and they have accepted it. They have not always done so willingly, but they have accepted it. In a sense, that should incentivise putting controls in place to stop these things happening.

Q54 **Chair:** Could there be more controls in place to stop people investing in crypto-assets?

Andrew Bailey: In that world, there is a lot of emphasis on things like artificial intelligence as a means to create automatic controls to spot things that are suspicious more quickly. One of the problems in that world—again, there is an awkward trade-off here—is that we have sped up payment processing, again because it is regarded as a good thing, but the more you speed it up to be instantaneous, the more you are lifting your hands off some of the controls. You then have to try to put them back, but you are often doing that with automatic AI-type tools.

Chair: We could go down a whole different thing about consumer protection on crypto, but I will resist the temptation.

Q55 **Sir Geoffrey Clifton-Brown:** Good afternoon, Mr Bailey. I want to ask you about professional indemnity insurance. The professional indemnity insurance underwriters were very quick off the mark. They very quickly stopped writing professional indemnity insurance for those who were giving opt-out advice.

Two questions arise from that. The cost of getting professional indemnity insurance will be mutualised across the financial services industry. Is this—I do not only mean British Steel but other pension schemes that are in the same situation—putting unnecessary strain on the financial services industry because of the huge increases in the cost of professional indemnity insurance?

Andrew Bailey: It was something that we were concerned about at the FCA. If my memory serves me right, about half the insurers who were providing PII to pension transfer firms withdrew. It went from about 15 down to about seven or something like that. About 12% of the firms that had permission to provide pensions advice withdrew from the market post British Steel, if I remember rightly. For a proportion of those, it was because they did not have or could not get PII. It is an issue.

What is problematic is that PII is really meant for what I call the genuine honest mistake, not systematic mis-advice or mis-selling. The insurers would say, "We are not there to insure against systematic mis-selling. We cannot really cover that." It is for the genuine honest mistake: something goes wrong and you compensate for it. The more the pendulum swings away from that towards systematic problems, the less likely it is they can get cover.

The other thing to say—I know this came up in the previous hearing—is that there is a difference between PII in the solicitors' market and PII in the financial services market. In the solicitors' market, I believe there is a six-year run-off provision. It preserves cover for six years. That is not the case. Ms Hann asked why the FCA did not prolong the cover. You just cannot do it in the financial services world, because it is a 12-month contract. It pays out on claims made during those 12 months. Once the 12 months pass, the firm has to get another 12-month contract. If it does not, it cannot do the business anymore. It does not have any cover for past claims or for claims that arise on past activity.

It is narrow. The straightforward answer to your question is yes. The market is narrowing, and the cost is going up.

Q56 **Sir Geoffrey Clifton-Brown:** The second part of that is that a number of firms giving opt-out advice were able to cease to trade. If they ceased to trade and therefore did not pay out compensation, should the FCA have gone after the individuals behind those firms or, if they were sole traders, gone after the individuals with greater alacrity to force them to pay out compensation or be banned from the industry for life?

Andrew Bailey: You come back to the 30 investigations. I cannot comment on where they are and who is in that.

Q57 **Sir Geoffrey Clifton-Brown:** It is a generic question. I am not asking about a specific investigation. I am asking for your view as former CEO of the FCA.

Andrew Bailey: The answer is yes. If these are firms that have broken the rules and created harm while they were authorised, they are subject to investigation. That investigation does not lapse if they give up the permission.

Sir Geoffrey Clifton-Brown: If they have the funds to do it, yes.

Andrew Bailey: If they do not have the funds, it falls to the FSCS for compensation.

Q58 **Sir Geoffrey Clifton-Brown:** The FCA can pursue those individuals, can it not?

Andrew Bailey: It can, yes.

Q59 **Sir Geoffrey Clifton-Brown:** It can stop them trading for life, if necessary.

Andrew Bailey: Yes, it can.

Chair: We are desperate to get the results of these 30 investigations that seem to be going on.

Andrew Bailey: Yes. I apologise; I am not involved in them.

Q60 **Nick Smith:** Do not hold your breath, Chair. Mr Bailey, there are just two things from me. First of all, I want to ask about the complaints-based redress scheme that the FCA had previously stuck with for so long under your management. I remember writing letters, attending meetings and complaining time and time again that steelworkers were not complaining because, very often, a friend, an introducer or someone they knew in their town had put them on to this IFA, and to them it did not seem right that they should complain to the very person who had sold them this—

Andrew Bailey: We corresponded on this. I remember you and I corresponded on this.

Q61 **Nick Smith:** Yes. I remember saying, "These steelworkers are not going to complain. That is just the culture at the moment. What you are suggesting is not sufficient. You need to have a redress scheme where there is an envelope for everybody, because so many of them have clearly been ripped off. The complaints-based approach you are using is not sufficient."

Here we are four and a half years later and there is now talk of a redress scheme. Why did the FCA, under your leadership, not recognise that this was a bigger problem that needed to be dealt with?

Andrew Bailey: That is a fair point. I cannot tell you about what has happened since my time, but I can tell you the reason why we had to switch our approach during my time. We took a QC's advice on this point. All our work through the "time to choose" process was targeted at those firms that we believed were most likely to commit harm. That was the right thing to do, by the way.

Nick Smith: As you would accept, there was a long tail and lots of firms giving advice.

Andrew Bailey: Can I just make the point? The QC's advice on a redress scheme was that, if we wanted to go down the road of section 404—I am not so familiar with it these days—our evidence base had to be an unbiased sample. Our evidence base was not an unbiased sample, because we targeted it for good reasons. We had to step back and say, "We will do the very detailed work to get the unbiased sample." That is what you need to get the evidence base to do a redress scheme. That was a long piece of work.

Q62 **Nick Smith:** I accept that you need evidence to put forward a new policy and to protect steelworkers. I suppose my question is this: why did you not do it earlier? We all knew it was a problem. Steelworkers have since died, not having their—

Andrew Bailey: Can I just say this? We were not wrong to target the work initially. That meant we were trying to get to the people who were most likely to be mis-sold or mis-advised. We were not wrong in doing that. We got more firms out of the market that way more quickly. We did have to change course, but that was natural. To do a compensation scheme, you have to do the unbiased sample. That was the QC's advice; I remember it.

Q63 **Nick Smith:** There is one final question from me. You will remember that very often the artful dodger in this whole exercise was the introducer. These were the people working in the grey area, perhaps not regulated by the FCA.

Andrew Bailey: They were not regulated.

Q64 **Nick Smith:** Very often, they were tied into regulated companies. For a variety of reasons, they have escaped being chased by the FCA or the police and so on. Of course, introducers are not just found in this bit of the financial world, are they, or in this instance? This is one of the reasons we asked this question earlier. What can be done about these people, these introducers out there in the grey market, who have a heavy responsibility for ripping people off but who always seem to get away with it?

Andrew Bailey: This is the so-called authorised representative part of the regime. The FCA's approach in my time—it probably still is—was to say, "It is the authorised firm"— **Nick Smith:** I accept that.

Andrew Bailey: There is a point here. The FCA said, "We are going to hold the authorised firm responsible for what the introducer is doing, because the introducer is contracted with the authorised firm." That was deliberate. We were saying to authorised firms, "You are responsible for what goes on here. If this goes wrong, it is you we are after." You can rightly ask—as I say, I am not involved anymore—whether that works.

Q65 **Nick Smith:** Yes, because it is your job to make it work.

Andrew Bailey: Yes. The principle is right. I do not have the evidence, because I am not involved anymore, across the piece—there are authorised representatives across quite a bit of the financial services landscape—about how that is working in practice. That is a fair question. I do not know the answer to that question, I am afraid.

Q66 **Sir Geoffrey Clifton-Brown:** Mr Bailey, with your experience of trying to enforce your judgments, does the fact there has only been one prosecution out of at least 30-odd known cases mean that perhaps the rules are too difficult to bring about a successful prosecution?

Andrew Bailey: That is a really good question, and it comes back to something I said earlier. It is intensely frustrating to all involved that these cases take a long time. I can tell you that, as CEO of the FCA, you are asking why we are taking so long to do these cases. The answer comes back, "We want to win these cases." The FCA does win a very high proportion of its cases. Certainly, I can tell you that was the case in my time, and I do not think it has changed.

Your question is very important, but the question is this. There are all sorts of civil law—in this case it is civil law, and it is mostly civil law—protections for the defendants in these cases. They are built into the system. I do not want to say they are wrong, because they give people protection against an overbearing regulatory state, but the balance is an important one. It is frustrating that these cases take so long. I gave an example earlier. It is a fact of life that they all hire lawyers, and the lawyers occupy an awful lot of the FCA's time. It is part of what the FCA has to go through.

I am not a lawyer, so I am not the best placed person to judge the balance between giving defendants their rights and assuring that a regulatory process goes efficiently. Other people are much better placed to judge that than I am.

Q67 **Chair:** Thank you very much, Sir Geoffrey and colleagues. Thank you, Mr Bailey. We looked at this when the NAO put its Report together. We give our thanks to the NAO, Mr Smith and others, who have really pursued this rigorously. We were very struck by how this particular group of pensioners,

as a group, were underprepared and had to make a very complex decision in the period of time. As Mr Smith has touched on, introducers also played a role here. It has been interesting to hear what you have had to say. In some ways, we will never compensate those individuals who have lost out, whatever people's regrets are now.

I have one final question for you. What lessons would you say you have learned? You are currently Governor of the Bank of England. You were the head of a major financial regulator. Has what happened to the steel pensioners taught you anything that you will do differently in future or that you would advise anyone in your position to do?

Andrew Bailey: It is very hard. It was ill prepared to put the members of the British Steel pension scheme in what was, frankly, a very difficult and slightly gun-to-the-head situation, because of the state of the company. This is what it all goes back to. They had to make what is the most complex financial decision that any of us could have to make in our lifetimes. It is an inherently extremely complex calculation. I do not think it was properly prepared.

Q68 **Chair:** What should the FCA have done? What would you advise that people do in that situation?

Andrew Bailey: I would go back to something that Caroline Rookes recommended in her report. There was a problem with it in this case, which I will come onto. In this case, it should have been primarily for the Pensions Regulator, with the FCA having a smaller role, to say, "This process should not go ahead, because it is not properly prepared." The problem is—this is what I was going to say—that you have to look at the wider context here. Tata Steel was facing a life-and-death situation, and there were a lot of jobs at stake. I do not want to diminish that at all. You are probably more knowledgeable about this than I am. That was a very difficult context for this process.

Chair: Thank you very much for coming in front of us today. We had better let you go before we try to ask you about monetary policy and interest rates.

Andrew Bailey: You have succeeded on that one.

Chair: We are very much aware that if you raise your eyebrow in the wrong direction, it might just set the markets off in a particular direction. We will resist that temptation. Our sister committee, the Treasury Select Committee, does a robust job of challenging you, as is its proper remit, on those issues. Thank you very much indeed for your time. A transcript will be published uncorrected on the website in the next couple of days, and we will be producing a report in due course.