



Treasury Committee

Oral evidence: [Financial Conduct Authority](#), HC 1055

Tuesday 10 February 2015

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Members present: Mr Andrew Tyrie (Chair); Rushanara Ali, Steve Baker, Mark Garnier, Mike Kane, Andrew Love, John Mann, Jesse Norman, Teresa Pearce, Alok Sharma, John Thurso

Questions 1-151

Witnesses: **John Griffith-Jones**, Chairman, Financial Conduct Authority, and **Martin Wheatley**, Chief Executive, Financial Conduct Authority, gave evidence.

Q1 Chair: Thank you very much for coming to give evidence to us today and, of course, quite soon after you have both been before us on related matters. About six months ago we raised a number of issues with you, Mr Griffith-Jones, where we felt the FCA were not giving the level of co-operation to Parliament that it needed. We are some way down the line to resolving those three issues but we have not arrived yet. The Committee has discussed this. We are not very happy about this and I would like your reassurance this morning that resolving these is now something you are giving your undivided attention to.

John Griffith-Jones: It is.

Q2 Chair: One of them is something we will be discussing today, which is interest rate hedging product mis-selling or alleged mis-selling. We are not talking about something that is quite remote from retail customers here—as we are often with LIBOR, for example—we are talking about bankruptcy and ruin for a number of people. Some of the personal stories are appalling and tragic, and one of the crucial questions in this area is whether we think the regulator has done what it can, given its legal scope, the limits of the law in this area and the regulatory scope. I think that will occupy part of this hearing at the start. With that in mind I want to ask a couple of procedural questions, Mr Griffith-Jones. In your view—in order to try to resolve this problem—is it in the public interest that the agreements between the FCA and the banks should be put into the public domain?

John Griffith-Jones: I think transparency of these documents is desirable, yes.

Q3 Chair: Is it your view that any damage is likely to come to the banking sector as a whole, beyond reputational risk, which might preclude their publication?

John Griffith-Jones: As I think we have discussed in exchanged correspondence before, it is our belief that the documents are subject to this section 348 issue.

Q4 Chair: This is the confidentiality clause, the duty of confidentiality imposed on the FCA for material received by it from a member of the regulated community.

John Griffith-Jones: Yes, and that has been established by an earlier FOIA request where it was determined that this was section 348 material. I think we are clear that it is within that. Do I think that this would damage the industry? I cannot speak for the banks themselves. They may have a commercial motive, which they obviously would not be sharing with me, as to why they would not wish this to go—

Q5 Chair: Commercial motive is going to be reputational, isn't it?

John Griffith-Jones: It could involve money as well, of course.

Chair: Well, reputational damage will lead to financial damage.

John Griffith-Jones: I would expect that they value the principles/certainty of section 348, at least in concept, as knowing that information shared between us and them is information shared for the purposes of regulation. But I cannot speak for precisely why, or indeed see any reason as to precisely why, more generally, it would not be in all our interests to have these documents in the public domain.

Q6 Chair: That is very helpful. I think we need to get closure on this issue at speed and that, given the regulator's conclusion it is in the public interest it should be in the public domain and subject to scrutiny and greater transparency, we had better all get on with it. As I began this hearing by saying, we are talking about the lives of thousands of people who have had a terrible time, in some cases amounting to financial ruin, as a consequence of what appears to have been going on.

I would like to get into the issue itself of these products, and I know that other colleagues will want to as well. Mr Wheatley, people have been offered caps on the interest rate cost as an alternative replacement product to compensation. You know about these arrangements, do you?

Martin Wheatley: Yes.

Q7 Chair: I am told some of these caps are of 15 years' duration. Do banks routinely sell 15-year caps to small businesses?

Martin Wheatley: If it is a 15-year loan and the small business wants interest rate protection, then the product would also run for the term of the loan, so typically, yes.

Q8 Chair: Have you looked at that?

Martin Wheatley: Which aspect of it?

Chair: Have you looked at whether it is typical for a 15-year loan to be covered by a 15-year cap?

Martin Wheatley: Yes, I have looked at it. In these products it is not in itself unusual for the protection to be the same period as the loan.

Q9 Chair: I think we might take a look at that. I think it is extremely unusual for banks to offer products to small businesses of more than five years. I am amazed that you should have given such evidence.

Martin Wheatley: Sorry, can I clarify? The point I am making is that the protection would typically be to the extent of the loan. Where we have serious concerns is where the protection appears to be for a significantly longer period than the loan entered into, so that was the point I was trying to make. If the two are in parity, of itself that would not be unusual. It would be unusual if the two are different periods.

Q10 Chair: It is extremely unusual for banks to sell 15-year cap products, full stop.

Martin Wheatley: They sell mortgages of 25, in fact 40-year mortgages.

Chair: This is not a mortgage. This is a cap to a small business. It is a completely different type of product. I am extremely concerned by your answers and by the fact that you do not seem to have a grip of what the likely action of a bank will be when asked by a small business for protection of this type. I am very surprised by your answer. Are you aware that the value of a 15-year cap is likely to be very high, because it is rare and it is in a thin market and, therefore, is likely to very largely offset the amount that would otherwise have been paid in cash compensation?

Martin Wheatley: I am confused by the question: the value of the cap being offered as an alternative is very high, or the initial cap that was offered?

Q11 Chair: It is an offset, isn't it—used to offset? These products are being offered by banks and, it is alleged, sometimes almost imposed by banks, as a partial offset.

Martin Wheatley: Again, if I can be clear, is this the original sale or the compensation element that we are talking about?

Chair: We are talking about the arrangements being put in place for the redress.

Martin Wheatley: The arrangement being put in place is typically to try to put the small business back into the situation it would have been had there not been a mis-sale or a misrepresentation. In some cases—in fact, many cases—that is a full tear-up. In some cases it is an offer of a cap, where the bank and the expert witness would judge that that would have been the decision made in full knowledge of the facts at the time.

Q12 Chair: Have you examined and taken advice on what assessments are being made of the true worth of these products?

Martin Wheatley: That has been part of the expert judgment in reviewing the alternative products that have been offered.

Q13 Chair: We are relying there on the skilled person.

Martin Wheatley: Yes.

Q14 Chair: These skilled persons are, in fact, four large accountancy firms, aren't they, pretty much?

Martin Wheatley: Predominantly, yes.

Q15 Chair: Are you confident that they are truly independent?

Martin Wheatley: They clearly do other work for the banks and we recognise that but it is very difficult, frankly, to find people who do not have some commercial relationship with the banks. But in terms of how they operate this scheme, yes, we are comfortable that they are independent. We put a lot of comfort in the fact that we have looked at how they operate the scheme in the governance arrangements and the oversights that they have in place, so we are comfortable that the independence of the reviewers have been maintained for this scheme.

Q16 Chair: What do banks have to show to the skilled person in order to enable them to judge if the offer is fair and reasonable?

Martin Wheatley: Typically they would show all their documentation around the original agreement. Typically the skilled person would take representations from the small business as well. They would perform their own calculations and come up with a view as to what they thought was appropriate and, if they felt that the bank's original offer wasn't, they would push back against the bank's original offer.

Q17 Chair: Have you examined whether in all cases the skilled person has been given access to the complainant in these cases, to the small business?

Martin Wheatley: We have not examined in all cases because we would be doing the job of the skilled person. Where there have been accusations that that has not been the case—

Chair: I am not asking you to do the job of the skilled person—I am sorry to interrupt—I am asking you to check whether the skilled person is doing the job. That is, are they contacting the firms in order to obtain the firms' views?

Martin Wheatley: As I say, we would expect them to. We would not validate on every case but if we had complaints that they were not doing that we would go back to the bank and the skilled person to check on that.

Q18 Chair: Have you had complaints of that type?

Martin Wheatley: Yes, we have.

Chair: So, this is going on; we are in a position where small businesses feel that they are being excluded from being able to offer a review on the detailed documentary work that is being supplied by the banks to the skilled person, on the basis of which they form their judgment. Before you respond again, the deep concern here is that, if the material from the banks is almost all, or all, of what the skilled person has in front of them in order to make a decision—and given it is likely that they were dealing with an unsophisticated counterparty, possibly without any sophisticated representation—the skilled person is taking a decision on the basis of the evidence of only one side of the case.

Martin Wheatley: In every case the banks have to give the SMEs—the small businesses—the chance to present their case and bring whatever material to the table, and the skilled persons would be part of that discussion process. To say that there were complaints—there absolutely have been complaints and some of the small businesses have felt it was unfair or unbalanced against them. We have looked into the process and we consider the process to have been reasonable and fair.

Q19 Chair: We will be looking at that as well, and we will want to hear any evidence to the contrary or in support of the point you just made. Just to clarify, on the £10 million threshold—or cap, I suppose one could think of it—if the value of the swap is more than £10 million, you are deemed to be sophisticated. Is that right?

Martin Wheatley: Yes.

Q20 Chair: That takes out a large cohort of cases, doesn't it?

Martin Wheatley: It took out about a third of the total of the products that were sold.

Q21 **Chair:** That is helpful; very helpful. Do you know what the total value of the swaps that were taken out by that was?

Martin Wheatley: Not off hand, no.

Q22 **Chair:** Would that be much higher than a third?

Martin Wheatley: Yes, on the basis that these were typically the larger customers.

Q23 **Chair:** I think it would be helpful if we could have that information or an estimate of that information as soon as possible. Other colleagues I know will want to come in with a number of other questions. There is one more question I would like to ask: what role, if any, do you think the Ombudsman should retain in all this?

Martin Wheatley: The Ombudsman has a role but it is limited by the extent of an award that they can make. For many of the small businesses the £150,000 limit on the Ombudsman capability is too low for it to be effectively of use to a small business. But they could certainly—and I know they have looked at a number of cases.

Chair: Just to clarify, on the basis of not only these exchanges but quite a lot of information that we have received, my concern is that, having been done over once by the banks, there is a grave risk here that a number of small businesses are going to be done over a second time in the redress and compensation arrangements, and we need the FCA to be extremely alert to trying to prevent this. I am not yet confident on the basis of the replies I have just heard that you are on top of it. But that is a judgment that we will want to make in the days and weeks ahead.

Q24 **Mark Garnier:** Mr Wheatley, just a couple of things before I carry on with interest rate hedging products. First of all, can I thank you for agreeing to meet with the Connaught victims? I think our officers are in contact with each other to set a date. Also, just on a bit of housekeeping, when you last came before us you said you would give more details about secondees going to banks between service providers and we have not had anything back on it, so if you could come back to us on that, please.

I want to carry on with this business of the interest rate hedging products and, in particular, to follow on from the questions asked by the Chairman. Obviously there are no documents you have passed to us that we can use at the moment, but I have been passed documents on a specific case that was run concurrently with one of the redress schemes and also at the same time in a legal case. As a result of the legal case, the judge ordered that some documents be passed to the victim, and the victim has passed those on to me so I want to ask you about some of those. It is quite understandable that you will have no knowledge of this particular case, so I am not going to refer to the case at all, nor will I refer to the bank in

question, nor the victim. But what has been thrown up by these particular documents is the process by which the regulator has come to the final position in terms of how the redress scheme works. This in itself has thrown up some quite significant questions, I believe, about the process by which you got to where you are and what influence the bank has had on your organisation in terms of getting to a final scheme.

Just by way of recap—and correct me if I am wrong—the first part of the agreement comprises three separate documents. The first document is a legal agreement where your predecessor, the Financial Services Authority, wrote to the banks in question, I think in June 2012, with a pretty simple agreement that the banks had to undertake in order to then start the pilot process. This was followed by a second legal agreement in early January 2013, which is a supplementary agreement relating to past sales of interest rate hedging products. The final relevant document is one sent out by you to the banks on 29 January—the final appendices that comprise the total agreement.

What is very interesting is a fourth document that was sent by Clive Adamson to the banks I think on 17 January. This was the opening gambit by your organisation to the banks—proposals for what the final agreement will look like. What is very interesting is how that document of 17 January had changed, as a result of your meeting with the banks, by the time we got the document of 29 January. If I may, I would like to confine my questions to the specific area of these changes and how they have affected the way this redress scheme has worked. Are you happy to talk about this?

Martin Wheatley: Yes.

Q25 Mark Garnier: Fantastic. The letter on 29 January—the final one—highlights in the introduction a number of different areas where, as a result of meetings that you had on 18 January 2013 and subsequently with the banks, your final agreement had changed in terms of coming to a more satisfactory agreement that the banks and you guys are happy with. There are a number of specific areas that are changes, and which Clive Adamson's letter highlights, and I am going to go through them.

The first one you highlight is a change on the sophisticated customer criteria. This goes through a more detailed approach, highlighting what the details are, and I think most people would agree that greater clarity on the sophisticated customer criteria is fair enough. However, the next one looks at consequential loss. As part of the redress scheme the FCA has accepted that consequential loss is acceptable and, from my understanding, this now ties consequential loss to the redress scheme. This was something of great concern to various people at the beginning of 2013. I will read what is written in your letter, "Consequential loss: we have changed our position on consequential loss. We accept that a straightforward approach that will allow for consequential loss to be determined as part of the review provides the right balance". Why have you allowed yourselves to have consequential loss tied to the redress scheme?

Martin Wheatley: Is that the question?

Mark Garnier: I am going to have questions on these details but the first question is: why have you allowed yourself to have consequential loss linked specifically to the redress scheme? This was very controversial at the time and, indeed, HSBC broke ranks on this one and separated it. So, as a regulator, why did you succumb to the banks' pressure to have consequential loss as part of the redress scheme and have the two linked together?

Martin Wheatley: The first point I would make is that the two are inextricably linked together because the compensation arrangement, if it was to be made, always had a simple 8% interest within it.

Mark Garnier: That is the redress scheme.

Martin Wheatley: But we explained that that 8% was in part to deal with consequential loss, so for many people that 8% on the cost of money over that period—

Mark Garnier: No, no. Consequential loss—

Martin Wheatley: No, sorry, I understand the point you are making but the point I would make is that there are two elements to consequential loss. The 8% on any pay should for many people have compensated them for the consequential loss that they would have suffered. But then for those who had an additional claim who believed their consequential loss was greater than that—and there is clearly an ability to make that case—we accepted that it would be more efficient if that could be dealt with and resolved as part of the overall assessment of a case.

Q26 Mark Garnier: If you remember, the whole point about consequential loss in the redress scheme was that redress could not be paid in anticipation of a subsequent consequential loss case or appeal. The whole point was that if somebody felt they had consequential loss over and above what was given in the redress scheme, that they were not going to get paid the redress but they were going to have to wait until the consequential loss claim was finished and ruled on, thereby depriving this business of something that was agreed on a very technical but simplistic basis—therefore, you were forcing people. This agreement was essentially forcing people to make an incredibly difficult choice, which is: “As a business leader, do I take the redress scheme and forget about consequential loss because my business is screwed as a result of this mis-selling, and I have to get on with my business and, therefore, will have to forgo the consequential loss just to get some cash into the business?” That is why it was so unfair.

I might add that that is why I think it was HSBC that broke ranks first on this because clearly, the banks in the end succumbed to pressure and agreed that this was the wrong thing. This was pressure that should have been brought by you as a regulator, who would be protecting the consumer—in this case, small businesses.

Martin Wheatley: I accept that and so the banks shifted their position. I think the judgment at the time was a concern that, as with other redress schemes, this could run for years and years and years and have no end in sight. That was the concern at the time. That is why we agreed that, if we could tie up the consequential loss along with the redress payment, that would lead to a quicker solution for all. Now, I know what happened—

Q27 Mark Garnier: A quicker solution and a better solution for the banks because it stresses the businesses even more than they were.

Martin Wheatley: Well, hopefully—well, there are two ways to look at it. It could be a better solution for individuals if it was resolved quicker and they do not have legal fees and whatever costs they are going through, so I think there could have been benefits on both sides but I am conscious that it became very controversial and the banks ultimately pulled away from that and said they would take the two things separately.

Q28 Mark Garnier: Crucially, you switched from one position to the other between 17 January and 29 January. This looks like pressure from the banks. Let me check something else. Offsetting: this is the offsetting of redress and consequential loss that would be paid in many cases to an insolvency practitioner, and the bank would be asking to offset that against money that was owed back to the bank in terms of the loan that needs to be repaid. Again, this is a very, very mixed area. There are some banks that say, “We owe you £500,000 because we have ripped you off but you owe us £5 million because we lent you the money. We will just keep that money”. So the rest of the people that are owed money by this failed business, as a result of the mis-selling, now have £4.5 million to split between them and it is now no longer the insolvency practitioner that is determining this. Some banks are paying the redress scheme to the insolvency practitioner, others are not. This is inconsistent. Again, this is something that was changed between 17 January 2013 and 29 January. This seems again to be pressure from the banks that you have succumbed to.

I am conscious an awful lot of people want to come in on this but there are two more things in particular that I want to cover. The next one is something that you do not highlight in the covering letter of 29 January—something you accepted you have changed, but I think it is absolutely fundamental to how this whole redress scheme has been done. In the first agreement you have a table of definitions and I think the key one is the skilled person definition. I cannot find it that easily but a skilled person means, “The independent third party approved by the FSA who will report to the FSA under section 166 of the Financial Services and Markets Act 2000”. This is the skilled reviewer, the independent reviewer. In the final document you have definitions, so the definitions are absolutely crucial because the definitions look at the legitimate condition of a lending agreement.

In the document of 17 January there are these definitions and, broadly speaking, they are pretty much the same. I will read the first line. Paragraph 51, definitions, 17 January: “In order to determine whether or not the sale of an interest rate hedging product is a legitimate condition of lending, firms and skilled persons should consider all the facts of the case”. By 29 January, that same sentence reads, “In order to determine whether or not the sale of an IRHP is a legitimate condition of lending, the firm should consider all the facts of the case”. You have removed any reference to skilled person. That removal happens not once but six times during that definition of a legitimate condition of a lending arrangement.

Next there is the overall preamble regarding the legitimate condition of lending arrangement. The next one refers to evidence required for firms—credit policies need to show that the customer has to have an interest rate hedging product. The next one refers to matching a hedging product with the lending risk. The next one refers to evidence that the customer's circumstances show the need to impose a hedging requirement. The next one refers to evidence that communication regarding the product was a condition of lending, allowed sufficient time and was not misleading. The final one refers to the firm checking that the condition of lending was legitimate and requires a further assessment to ensure sale of the product was within regulations. Essentially, you have now taken away the necessity for the independent section 166 reviewer to judge whether this was a legitimate condition of a lending arrangement. This now puts it entirely in the hands of the bank. This is the agreement that you have now advanced.

Martin Wheatley: Unfortunately I do not have those agreements in front of me. In practice I do not believe that that is what that second agreement was doing. The independent reviewer did look at whether it was a legitimate condition of the loan, and that was one of the very important considerations for us. Of the 14,000 loans that have been assessed, 95% were found to have been mis-sold and people have accepted cash repayments.

Q29 Mark Garnier: Let me come to the point I am trying to make, and the final part where there has been a change. Concerning the FOS review—the Chairman has mentioned this—in your letter, you say, “In our announcement on June 2012 we said we would approach the FOS to ask if it would consider offering a specific scheme for dealing with the outcome and review and related matters. We have decided not to review the FOS scheme for customers”. So again, you have come under pressure from the banks.

At the end of the day, what this compiles is something that has no natural justice whatsoever. What is being done—and this is the evidence that has come as a result of reviewing these documents—is that you have created a scheme whereby it is the banks that decide what documentation goes to the independent reviewer. The banks are looking at this documentation. They are submitting what is suitable for them and the independent reviewers are then going through based entirely on the evidence that the banks have produced. Not only that, the only course of redress is that the consumer can then go back and ask for a review, and the independent reviewer merely reviews the file that they have already looked at.

Let me highlight the points that were raised by the victim in this particular thing. The victim submitted to their bank, when they were looking for this, a 70-page document highlighting all the information that they felt was relevant to their case. The document that was produced by the court is known as a DG2 trade printout; this is the paperwork that goes with this particular case. Do you know how much of that 70-page document found its way into that case file? One paragraph—one paragraph out of 70 pages. There is no justice system in the world that would allow a victim of a crime to have to submit their evidence to the perpetrator of a crime, to then edit that information and then subject it to a closed court. This is completely and totally unjust; what have you to say to that?

Martin Wheatley: You are using the very highly charged term “crime”. We are not dealing with crime here. We are dealing with conduct issues between banks and their customers.

Mark Garnier: All right; none the less, it is not a process of natural justice.

Chair: Mr Wheatley needs to answer.

Martin Wheatley: You raised a number of process points, and I am very happy to come back on the process points. Clearly this was a voluntary agreement, so there was a negotiation to create a voluntary agreement. We had to judge our ability to get recompense to the small and suffering businesses and we recognised at the time that many of these businesses were at the last edge. They were suffering. They were facing significant payments, so we put in a scheme that we felt would do the right thing, which is getting the maximum money back to the maximum number of people.

The scheme has paid out £1.8 billion; 14,000 of the 17,000 eligible customers have already accepted settlement under the scheme. The remainder—

Q30 Mark Garnier: Not all are happy. Not all feel they have been properly looked after, and this is evidence that the scheme is loaded in favour of the banks.

Martin Wheatley: I am sure there will always be some, and we have had ongoing correspondence with some who feel that the scheme has not worked for them, and we are trying to resolve those issues. But for the vast majority, people did get what the scheme set out to do, which is they got their money back quicker than any other scheme would have achieved.

Q31 Mark Garnier: I still maintain that you have not had fair justice in this. You are right: it is not a crime, although many of those people who have lost their jobs, their homes, their livelihoods, their reputation—everything—would feel that this is a crime. None the less, how is it possible? You are the conduct regulator. You are the organisation that is there to look after the consumer. What this clearly shows—clearly shows—is you came up with an idea which you felt happy with on 17 January 2013; the banks put pressure on you, and you have succumbed to pressure from the banks to come up with an agreement that is loaded in favour of the banks, to the detriment of the people you are charged with protecting: the consumer.

Chair: We now need to give Mr Wheatley another opportunity to respond to the allegations being made.

Martin Wheatley: Yes, and again I am very well aware that not everybody is happy with the outcome that they have achieved. Those that haven’t—and some of those have come to us through MPs’ letters, some through different routes, some through lobby organisations—we have worked extremely hard with to try to make sure that the outcomes that they get are fair and reasonable. We have not finished that process yet. I am aware that there are some more. But I come back to my point: 14,000 out of 17,000 eligible customers have cash payments; £1.8 billion has been paid out that would not have been paid out had we not entered into this scheme.

Q32 **Chair:** Just to be clear: when you say 14,000 people have settled, you are agreeing with us, though, are you not, that it may well be that in among those are a heap of people who feel no justice has been done to them?

Martin Wheatley: It is difficult to agree. I do not know if that is the case. We have a number of items of correspondence ongoing. Typically the correspondence we have is with people who have not settled or are seeking consequential loss.

Q33 **Chair:** I am sure you understand—because you seemed unclear about customary practice with respect to the capping arrangements, and because, as we have just heard, there are a number of deep concerns about the process by which those settlements have been reached—that that number could be considerable.

Martin Wheatley: It could certainly be higher than a few hundred, which are the number of people that we have—what I call—ongoing correspondence with.

Q34 **Chair:** Therefore, there is a lot of work for the FCA to do on this issue before we can say we have this to a much better place.

Martin Wheatley: I would not say a lot of work. As we always do, we would do post-implementation review as to what has worked in the scheme and what has not.

Q35 **Chair:** That will be scant comfort to people who feel that, having been ripped off by the banks once, they were then done over a second time under the noses of the FCA.

Martin Wheatley: Anybody that feels that—genuinely that has a case—we will look at, and we have looked through a number of those cases. In some cases we have gone back to the banks and asked them to look again. In some cases, frankly, we have not agreed with the arguments put forward.

Chair: That is important.

Q36 **John Thurso:** Can I continue in this vein? PPI, interest rate hedging products, TBLs, Libor, Forex, money laundering and now tax evasion—should we not be regarding the banks as guilty until proven innocent in all of these issues?

Martin Wheatley: That would be a reversal of the normal system.

Q37 **John Thurso:** Do they not deserve that?

Martin Wheatley: It is quite clear that the number of scandals that we have seen in financial services, particularly in banks, has been staggering to anybody and the latest allegations are equally scandalous.

Q38 John Thurso: When a scandal like IRHP comes to our attention, we should not be in the business of starting by saying, “It is a few rogue elements”. We should start by saying, “This is entirely within the pattern of the way they have operated for years”.

Martin Wheatley: What we did and what we should do is a proper fact-based review. That is what we did at the first part of this process. We did quite a deep sampling to assess whether it is a few rogues or whether it is widespread. We took the view very quickly that it was widespread.

Q39 John Thurso: We have a widespread scandal. What have you done to ensure that there is consistency in the approach for each of the banks in dealing with their different reviews?

Martin Wheatley: In each of the reviews we will have a team that we would work closely with, either the bank directly or with the expert witness—if they are using experts—to ensure that the actual delivery is against them and meets the objectives that we set out in the review, whether that is PPI or interest rate swaps. On a number of these reviews we have found that that has not been the case and we have taken subsequent enforcement action against banks that are deliberately subverting the intentions of the scheme that we set up. We have done that in the past and there will no doubt be future cases.

Q40 John Thurso: For those banks that are, in your words, deliberately subverting the intentions of the scheme, is it public knowledge which banks have been so charged and found guilty?

Martin Wheatley: There have not been any cases in regard of interest rate hedging. With PPI there were, and they have been public.

Q41 John Thurso: So to be clear, let me ask you in relation to IRHP: are there any banks that you have found not to have acted properly in that regard?

Martin Wheatley: There are no banks that we have taken enforcement action against for their failure to implement the scheme.

Q42 John Thurso: You are satisfied that all of the banks have acted properly in the way that they have dealt with you and their customers?

Martin Wheatley: Yes.

Q43 John Thurso: How satisfied are you that they have acted properly, particularly in regard to being consistent across all the different banks? Because you have different banks, different reviewers, it stands to reason there must be different approaches. How do you satisfy yourself that they are taking a good approach?

Martin Wheatley: In part through sampling—we do sampling surveys of the work that they have done—in part through looking at complaints data and whether the banks have properly responded to the complaint, and in part by taking some of the individual cases that have come to us and working those back through the system and seeing how they have been dealt with.

Q44 John Thurso: When you produced your report in April 2014, HSBC and Lloyds had finished reviewing—99% in the case of HSBC and 96% in the case of Lloyds. By contrast, Barclays had only done 78% and RBS had only done 75%, and the overall percentage of good outcomes for complainants, which is either full redress or alternative product cap, was 75%. In December, the report showed that the good outcomes had dropped to 64%. Given that HSBC and Lloyds were 99% and 96% complete as at April, it is reasonable to suppose that the drop in satisfaction had come almost entirely from Barclays and RBS. Would you agree that that is a logical conclusion?

Martin Wheatley: To be honest I am not quite sure what the numbers are, so I will have to accept your derived conclusions from the number. I cannot tell you what judgments we made at the time about why those numbers had changed.

Q45 John Thurso: The proposition that I am putting to you is that in your report in April 2014, HSBC and Lloyds had finished their reviews; 99% and 96% respectively. In other words, respectively they had 1% of their customers and 4% of their customers left to do. Whereas for Barclays and RBS, the percentage completed was 78% and 75% respectively, so they had 25% and 22% left to do. The overall good outcome rating for all of the banks was said to be 75%. In December 2014 the good outcome total had dropped to 64% and, given that there was only 1% of HSBC and 4% of Lloyds left, it is reasonable to conclude that the drop in satisfaction had come from the work that was being concluded on the other two banks. Would you concur that is a logical—

Martin Wheatley: I understand the maths; I can follow the maths. What I do not know is what other factors were at play at the time. So, rather than me agree simply from your maths that that is the case, I would sooner go back and look at whether there were other factors. I would not be giving a full picture if I gave you an answer today.

Q46 John Thurso: I thought establishing the facts would be the easy bit, let alone the question to you. But are you telling me that the facts as mathematically presented in your two reports may not stand scrutiny?

Martin Wheatley: No, I am not. I am saying that I do not have those two reports in front of me and, therefore, do not know what other factors were moving around between them. But I understand the maths. I understand the conclusion you are drawing from that.

John Thurso: But for the purposes of this we can assume that what I have just stated is a reasonable working conclusion.

Martin Wheatley: Right.

Q47 **John Thurso:** Quite clearly there is a demonstrably different good outcome level as between the former two banks and the latter two banks. Would you expect to have such a large difference in outcome level between one set of banks and another set of banks?

Martin Wheatley: No, I wouldn't, based on all of the work that we had done previously.

Q48 **John Thurso:** So how would you explain it then?

Martin Wheatley: Either the banks had a very different quality of process in their original sales, or their application of our scheme rules were applied differentially, and I would need to go and look at that again.

Q49 **John Thurso:** Which goes very much to the heart of what all three of us have been trying to get at. I go back to my original question: how do you assure yourselves—and how do we assure ourselves about your conduct—that there is proper consistency across the range of all the banks, all the reviewers and the actions being taken on behalf of all the SMEs?

Martin Wheatley: We assure ourselves through the sampling of work that we do, through the discussions that we have with the expert witnesses, through our reviewing of dissatisfied customers, and through the post-implementation review that we will do. Those are the sets of things that we will satisfy ourselves on. How you will is by holding us to account, and I am sure holding the banks to account as well, as to whether both parties have delivered to the original objectives of the scheme.

Q50 **John Thurso:** I had an e-mail from a reviewer who had undertaken reviews for Lloyds. He said that Lloyds had encouraged them to be very fair and open and he was satisfied that they had been given every access. Subsequently he came into contact with reviews done by RBS and felt these were done in a completely different way and to a completely different standard. I make no comment on the rights or wrongs of that, but when a reviewer who has been reviewing is complimentary about one set and rather uncomplimentary about another set, this rings alarm bells. Have you heard those bells? Has this come to your attention?

Martin Wheatley: I am not aware specifically of this one. I have heard those alarm bells in a general sense. Whenever we have a specific we will always follow up and try to get as much detail as possible.

Q51 John Thurso: When this hearing was advertised, those of us who have been interested in this received a great deal of information from different people, and it is not one person. Mr Garnier has talked about people who have contacted him. I have had a completely different set of people—including a brief that was prepared for the Scottish Finance Minister among others.

Chair: Many colleagues of the House have constituents with cases.

John Thurso: There are just far too many of them for this to be a case of smoke without fire. I am not satisfied that we know about the consistency on this.

The second area that that comes to is there is no right of appeal. Am I correct? Once a bank and a reviewer have come to a decision, irrespective, that is it, end of story.

Martin Wheatley: Through the scheme that is the end of the story, so the expert reviewer is the end of that process. People still have access through the courts. I accept that it is expensive for those people.

Q52 John Thurso: If the courts were that easy we would not have needed a scheme because we would all have gone to court.

Chair: And we are dealing with unsophisticated—

Martin Wheatley: I appreciate that. You are right; the expert reviewer is, within this scheme, the final point of this scheme. The Ombudsman and/or the courts are available but I agree it is difficult.

Q53 John Thurso: What is at the back of this is a very distinct feeling that the FCA have been captured by the banks for matters of financial stability and want to get this over and done with. We and our constituents do not like that, and we are not satisfied, and you have not demonstrated to us that in actual fact, this scheme has been fairly replicated across all banks and all reviews with the consistency it should have.

Martin Wheatley: I understand that. I am sure some of these correspondents we will know about, but it will be very helpful for us to have as much information as possible, so if you felt able to share that with us—

John Thurso: Any of them that give me permission to give it to you, I will give it to you, and I am sure that goes for all colleagues. Thank you.

Q54 Jesse Norman: Mr Wheatley, you may be aware that Lord Grabiner came in front of us recently to give testimony in relation to his review on Forex fixing. Have you seen the video of that hearing?

Martin Wheatley: No, I have not. I have read about the hearing, I have not seen the video.

Q55 Jesse Norman: Could I ask that you review the video and look at the testimony as well for that hearing?

Martin Wheatley: Yes.

Q56 Jesse Norman: Thank you. Just a question on that: if it proves to be the case—as appears possible, if not likely—that Lord Grabiner erred in not identifying further cause for criticism of Mr Mallett, who was the chief dealer, would that itself be potentially a cause of concern or investigation by the FCA?

Martin Wheatley: No—

Jesse Norman: In other words, if he was genuinely criticised for failing to take action on a clear indication of market manipulation.

Martin Wheatley: Again, just to be very clear, neither the bank nor the individual are persons regulated by the FCA, so it is not within FCA jurisdiction. I understand the concerns that the Committee had as to whether they received a full outcome. We co-operated with Mr Grabiner and provided as much information as possible. But it is not our review and it would not be our review, even if he had made mistakes in his final conclusions.

Q57 Jesse Norman: For the avoidance of doubt, who would be exercising that independent scrutiny of Mr Mallett under these circumstances, if not you?

Martin Wheatley: The bank itself, and the Court of the bank.

Q58 Jesse Norman: That is very kind and confirms what I think the understanding of the Committee was.

I wonder if I may turn to a question relating to an issue that has been in front of the Committee for some time. Mr Wheatley, at my suggestion and the suggestion of others, the Chairman wrote to you in relation to concerns about the levying of charges by HSBC on consumer credit cards, raised by a whistleblower called Nicholas Wilson. You responded on 3 February with a letter that I have only just seen—it has only just been circulated to the Committee—and I want to ask you about that.

If you recall the case, Mr Wilson, who had been acting for a firm of solicitors, discovered that HFC, an HSBC subsidiary, had been levying these charges and blew the whistle on it. Mr Wilson believes that the amounts of money involved may be hundreds of millions of pounds or potentially more than that, given that tens or even hundreds of thousands of people may be affected by these charges. In the course of that it emerged that DG Solicitors, which was the internal firm of solicitors—as it was suggested by HSBC—was not in fact a firm of solicitors. The Solicitors Regulatory

Authority confirmed that, contrary to their claim, this was not a firm of solicitors located within HSBC itself. It also became clear, in the course of the FCA's responses to Mr Wilson and those around him, that the FCA had on one occasion at least copied and pasted a piece of text from HSBC into one of its responses. You are aware of this?

Martin Wheatley: Yes.

Q59 Jesse Norman: When this was raised with the complaints person within the FCA, Michelle Broadhurst, she responded by acknowledging that that had happened without any particular apology or acknowledgement of culpability. But you would accept that copying and pasting bank text into FCA responses to formal requests of information or help is not an attractive piece of behaviour?

Martin Wheatley: It certainly would look odd and it gives a very poor impression. I do not know exactly the circumstances on which, as you say, copying and pasting happens.

Q60 Jesse Norman: It would be an embarrassment to you, though, to have that.

Martin Wheatley: Yes.

Q61 Jesse Norman: That is what I thought; thank you for that. In the course of the response, HSBC said to someone who had enquired about this that the agreements that had been reached with customers gave HSBC and its subsidiary or operating arm, HFC, the right to levy these charges, and that the fee was added after the customer had defaulted on the loan credit card payments. It was subsequently discovered that these agreements did not contain that provision and, therefore, this was untrue. It was knowingly untrue. HSBC had, in effect, lied to someone asking a question by saying that these agreements gave HFC the right when in fact it did not have the right to levy those charges.

Martin Wheatley: Yes.

Q62 Jesse Norman: Then what happened was the OFT got involved. In the FCA's response from Karina McTeague dated 3 February—which we have just received—Ms McTeague says that the OFT then took action on the imposed requirements, including that HFC ensure that its collection charges are set at an amount that allowed it to recover no more than the actual necessary cost it reasonably incurred rather than, as had been the case, levying charges irrespective of any actual legal proceedings or cost incurred in recovery.

Martin Wheatley: Yes.

Q63 Jesse Norman: You will be aware of that. You, or rather Ms McTeague—you collectively—have said, “In light of the regulatory intervention by the OFT in 2010 and other factors we do not currently intend to take further action on this”. So from Ms McTeague’s standpoint, from the FCA’s standpoint, the fact the OFT acted on this in 2010 relieves you of any responsibility to take action.

Martin Wheatley: The events happened before we had the responsibility for consumer credit.

Q64 Jesse Norman: It is true, is it not, that duties have passed to you, having been given up by the OFT in relation to those areas?

Martin Wheatley: Yes.

Q65 Jesse Norman: Of course the FSA, your predecessor body, was certainly in place at that point and the general principle has been that you have taken over there.

Martin Wheatley: Yes.

Q66 Jesse Norman: The question is this: did OFT assess any issue of illegality when it made its enquiries?

Martin Wheatley: Any question of legality?

Jesse Norman: Illegality.

Martin Wheatley: Clearly, the fact that they required that HFC stop making these collections is indicative that they thought the collections were inappropriate. As far as I am aware, they did not take action on redress and there were no suggestions of fraud, which I assume they would turn their attention to whether there was or not. But given that they took the view that the behaviour stopped in 2010 and, as far as I am aware, there was no fraud investigation, from my point of view that was the end of that issue. It is not something that the FCA would reopen.

Q67 Jesse Norman: I understand. So they did not assess the issue of illegality. They merely sought to stop the behaviour that they thought was in breach of the rules. They did not address the question of prior losses that had been incurred but you yourself would accept the principle, would you not—which you have adopted very much elsewhere—that prior losses should be recovered in cases where detriment has occurred? That is, after all, the principle you have been using with all these other cases.

Martin Wheatley: Yes, and that would be—absent applying retrospective regulation, which is something we are very cautious about, we would look at redress if fault occurred under the set of rules that we have inherited or taken on. It would not be clear in this case

that we would not be acting retrospectively if we had applied our current redress philosophy to breaches under the OFT rules.

Q68 Jesse Norman: So your principles in this area are three, are they not: a person should not benefit from regulatory breach; there are firm individuals who should be penalised for wrongdoing; and financial penalties should be sufficient to deter the person who committed the breach from committing further breaches?

Martin Wheatley: Yes.

Q69 Jesse Norman: What I want to probe quickly is whether you have discharged your obligations in those areas as the FCA. In the response that we received, Ms McTeague says, “The focus of our regulatory interest will be whether the subject matter of the complaint is a convention of regulatory standards”—we accept it clearly is a convention of regulatory standards; that is true—“to which a range of supervisory and enforcement powers applies”. These are carried over from the FSA and the FSA clearly had powers in this area, did it not?

Martin Wheatley: No, I do not think it did. On the question of whether our supervisory or enforcement powers would apply, our judgment is that they would not.

Q70 Jesse Norman: She also says, “We would consider the quality of evidence to support the complaint”. What checks were made by the FCA to assess whether or not there was evidence to support the complaint?

Martin Wheatley: We would have looked at the file. We would have looked at the evidence gathered. We would not have gone and done a de novo investigation to gather evidence unless we felt, prima facie, that there was a case for bringing an investigation forward. Based on the OFT’s conclusion and the fact that there was no fraud action taken, we took a view that there was not a prima facie case for us to intervene.

Chair: We will have to move on in a moment, Jesse, so if you just ask one more question.

Jesse Norman: No, I have a couple more questions, Chairman.

Chair: You had better ask them both together then, because we are going to run very short of time.

Jesse Norman: Way less time than you have given to Mr Garnier, Chairman, and this is a very important issue that I have been pursuing with the Chairman for some months now, so I would appreciate a couple more questions.

Chair: It is a very important issue, and please ask your remaining couple of questions.

Jesse Norman: Fewer interruptions would assist me in doing so.

Chair: Just get on with it, Jesse.

Q71 **Jesse Norman:** Thank you, Chairman. The question on this now is: that is not an issue of fraud, so I want to put in a formal request that the FCA make some assessment of what the detriment has been—an independent analysis of its own as to what detriment there has been and how many hundreds or potentially thousands of customers may have been affected. But there is also the further question: what happens to the individuals concerned who may now have left HSBC or may now have left HFC? You do clearly have powers in that area. If you so determined, you could decide that the individuals responsible for these fines, which have been determined to be not compliant with variable rules—which we know have been found to be unlawfully received or levied—should be pursued in their new careers and potentially be subject to some form of restriction on whether they are able to practice in financial markets now. That is perfectly within your power, in addition to potential fraud, is it not?

Martin Wheatley: Fraud is not within our power. It is within our power—

Q72 **Jesse Norman:** No, it is in your power. It is clearly within your power. It is just that you delegate it to other people.

Chair: We have to move on very shortly. Is it within your power or not?

Martin Wheatley: We are not the authority for prosecuting fraud.

Q73 **Jesse Norman:** That is a partial statement of the case. I am now pursuing the question of the individuals concerned.

Martin Wheatley: Yes, and if the individuals concerned were, in our judgment, not fit and proper then we can take action to prohibit individuals from the industry, but there is a high bar to take that action. You asked if we would do an assessment of the detriment; the answer is no, we would not. We have taken the decision on this case that there is no further action for us to take. We have a multitude of other calls on our resources and it would be disproportionate for us to call over something that was concluded in 2010 by the OFT with no further action at that point.

Jesse Norman: Well, I am speechless. Thank you for that.

Q74 **Chair:** I note in your response that you say the FCA has the power to prosecute fraud.

Martin Wheatley: Can I reply with a legally drafted letter then?

Chair: Okay. I just note that in the note that has just gone round—

Jesse Norman: It is clearly untrue, Mr Wheatley. You have told us you do not have power. The Chairman has pointed out that is not true. It is disproved by your letter here.

Chair: Order. We will see what the Chief Executive of the FCA has to say to us in writing. It is a very important issue that Jesse Norman has raised and, indeed, that the Committee has been raising on his behalf in correspondence, and we would like to take it forward in writing. We may need to take further oral evidence on it as well.

Q75 John Mann: Good morning. When and how did you first hear about the latest HSBC scandal?

Martin Wheatley: The broad allegations have been frankly known about in the market for a few years, so the whistleblower had gone to a number of authorities. The specific allegations that came out over the weekend—literally as these things have emerged for everybody else.

Q76 John Mann: So there has been no referral of any kind to your organisation or its predecessor on this matter?

Martin Wheatley: Not that I am aware of.

Q77 John Mann: Do you regard that as appropriate?

Martin Wheatley: Again, to put it in context, the allegations are about a Swiss unit of the bank based on events of predominantly 2005, 2007. We have done a lot of work with the bank on its global anti-money laundering, Know Your Client rules, and we jointly appointed a monitor in 2013, along with the US Department of Justice. So we are very closely monitoring the ability of the bank overall to improve the situation, and we think significant changes are being made—but not the specific allegations on the Swiss unit from 2005 to 2007.

Q78 John Mann: Those are major allegations; you are responsible for conduct. Shouldn't the public be concerned that you have not been informed by HMRC what they have been investigating?

Martin Wheatley: HMRC will have their own objectives that they are pursuing and I do not believe they're our conduct objectives. They would have—

Q79 John Mann: That is precisely, then, why they ought to have informed you.

Martin Wheatley: As I say, I am not aware of a direct channel of information on this particular case. But we are in discussion, clearly, with HSBC on their global operations.

Q80 John Mann: But HMRC are not responsible for conduct, you are. Isn't it remiss of them not to have raised this issue and pre-briefed you some years ago?

Martin Wheatley: I do not know if they have any such obligation upon them.

Q81 John Mann: Andrew Bailey last attended this Committee in October, and he clearly has concerns that you might be going too far—that prudential and financial stability should outweigh conduct issues. This balance that is there and the pressures being brought on you: you are increasingly being pressured, are you not, to be at competition and not conduct and to give the banks an easy ride? Is this not yet another example—the fact that you have not been informed—demonstrating that?

Martin Wheatley: When you say we are under increasing pressure, we have been given a competition objective and so one of the elements of our regulatory response is to use competition powers. There is a tension, and you are right, between prudential soundness and the penalties that are imposed for misconduct. Parliament has decreed that that tension is managed by the PRA having a power of veto if it feels that any action we take would create prudential safety and soundness. That veto has not been used. We have never got to the point where that conflict has meant that one side or other has to take a back seat.

Q82 John Mann: Has it ever been mooted or threatened or indicated?

Martin Wheatley: No, it has not.

Q83 John Mann: If you are not getting informed of what could be major conduct issues, no one needs to worry about a veto because you are not at the table looking at it?

Martin Wheatley: We are at the table. As I explained, we have appointed a monitor who is now reporting on HSBC globally on their implementation of counter-terrorist financing rules and anti-money laundering rules. That monitor has published a report, which shows that while some progress has been made there is significant work to do.

Q84 John Mann: HSBC have been investigated by authorities across the world but you, as the conduct authority in this country, have not even been formally informed of what HMRC have been investigating for five years. So what is going wrong with our regulation and conduct control of these major banks?

Martin Wheatley: Again, I come back to my point: we do have a deep programme of reform under way in a number of the banks regarding anti-money laundering, Know Your Client and terrorist financing. HSBC are one of the banks that we are working very closely with. The fact that the specific allegations in the “Panorama” programme last night were not formally brought to our attention—as far as I am aware, and it may be that they were—does not stop us doing the job of trying to make sure that all of these banks operate to the highest standards.

Q85 John Mann: It does not stop you but it does hinder you significantly, does it not? If this is, as appears to be the case, another major transgression of significant proportions and you are not aware of it, how can you possibly be working with said bank from 2013, or whenever, when you do not have the full knowledge of what they have been doing, and yet another part of government does have and is not informing you?

Martin Wheatley: Again, I do not know what the specific obligations of the HMRC are in terms of informing other bodies when they are carrying out their own investigations.

Q86 John Mann: No, but you know what your obligations are. Is it that Parliament does not have the powers and the balance right; is it that mistakes were made in what we have agreed; or is it that HMRC, in their culture and dealings, are not doing their job properly? You do not know, and I find that extraordinary. I think most people would find that extraordinary. I want to know why you do not know.

Martin Wheatley: If I had to comment on that, we clearly know quite a lot about the bank because of our ongoing work with the bank. We did not have the specific allegation, as far as I am aware, from HMRC on this particular incident about its Swiss subsidiary.

Q87 John Mann: Yes, but you will have a view on whether we should be looking at ourselves and whether we have it wrong in the structures that we have voted through or whether the structures are generally okay. But this is how part of the system is failing to work—in other words, that HMRC has it wrong by not referring it. So which is it? In your judgment, is it that the structures are wrong and, therefore, you do not know, or is it that HMRC are failing to inform?

Martin Wheatley: I am not sure I can comment on either because I do not know specifically what HMRC's obligations are to inform.

Q88 John Mann: But that is not an answer. That is an excuse for an answer. You are responsible, you are paid, you are authorised to deal with conduct matters in a lot of detail, through statute. Now you do not know about this as an organisation.

Martin Wheatley: As I said, as far as I am aware, we do not.

Q89 John Mann: Therefore there is something wrong. I am merely trying to find out what is wrong, because should there be an automatic duty on HMRC—is that what you are saying? Something is going very seriously wrong when one arm of government is investigating what appears to be very major transgressions, and another arm, the conduct authority, is not able to do so in the knowledge of those transgressions because nobody has told you. I do not know, Mr Griffith-Jones, if you have a view on this. Should we be reformulating the structures or should we be pressing HMRC on why they have not informed you?

John Griffith-Jones: I think the structures are satisfactory. I cannot honestly speak—

John Mann: That is a clear answer, thank you very much.

Q90 Alok Sharma: Mr Wheatley, we have seen this regular drip, drip, drip of misdemeanours coming out from the banks—mis-selling, the latest HSBC issue—and members of the public looking at this may well say that you do not have a grip of the whole issue. Do you share the view that ultimately, it is fair to say that you are failing in your duty to root out all these issues?

Martin Wheatley: I would share the view that from the public's point of view this drip, drip, drip, as you call it, of bad stories from the banks shakes confidence in the financial system, absolutely. The majority of what are coming out as new stories are historic and relate to the period 2005 to 2008. Some are more recent than that, but the majority go back some way. My hope is there will be less of a succession of stories coming out as time goes on.

Q91 Alok Sharma: You say you hope there will be less of a succession of stories. What is that based on? Are you aware of other stories to come out?

Martin Wheatley: I do not know if I am aware of any on the scale of some of the bigger stories, but we have within our organisation a number of investigations that are ongoing, which eventually will find their way into the public domain, which will raise further questions about the banks. The fact that these stories are coming out shows the opposite of what you said, that we do not have a grip on it: we do have a grip on it. That is why banks are being held to account for the actions they have taken.

Q92 Alok Sharma: When do you think this drip, drip, drip will stop dripping?

Martin Wheatley: I hope it will be diminished over time. One of the questions that all of us face—

Q93 Alok Sharma: Mr Wheatley, members of the public, our constituents will be potentially watching this and saying, “Well, that is not a good enough answer, is it?” How proactive are you when you sit down with the banks and say, “Right, get all the skeletons out of the cupboard now”? Have you ever had that conversation with the chief executives of the major banks?

Martin Wheatley: Yes, and we encourage the banks and they have an obligation to come to us, under one of our principles, and talk to us about the skeletons early on. We do have that conversation with the banks.

Q94 Alok Sharma: Are you confident in the conversations you have had that all the skeletons are, if not out of the cupboard, at least you are peeking at them, and you can see these skeletons yourselves at the FCA?

Martin Wheatley: No, I am not because frankly the CEOs do not know about these skeletons in their organisations.

Q95 Alok Sharma: You are reviewing the fines regime. Is it working? I think since April you have had £1 billion of fines. Do you feel that these fines make any difference at all, or are all the banks tarred with the same brush and therefore—the Chairman talked about reputation but the reputation is they are all damaged goods?

Martin Wheatley: I think they do make a difference. I am sure if you ask them they are worried about their reputation and, yes, all of them are suffering at the moment, but all of them, and everyone that you have in front of you, will tell you about how they are trying to improve the image of their institution and their industry. So the fines are significant and do make a difference.

Q96 Alok Sharma: Can I just ask you one final question on this particular point, which is this whole issue of what is systematically important as an institution. Correct me if I am wrong, but you said that there had never been an occasion where there was this conflict between you and the PRA. Is that correct?

Martin Wheatley: That is right.

Q97 Alok Sharma: Give me an example of a situation that could arise where there was some misdemeanour by a bank and you couldn't act because of the overriding strictures of the PRA.

Martin Wheatley: Misdemeanour may be too strong, but there was a subject of correspondence between us whereby one bank wished to put up its mortgage rates on its back book because it needed to rebuild its capital position, and we said, "That was not the contract you entered into with individuals so we do not believe you can re-price your back book on your mortgages". That was the situation and we had public correspondence about this through this Committee.

Alok Sharma: I will leave it there.

Q98 Mr Love: Can I turn to the issue of pensions reform, which is to be introduced in April? Is the letter that you sent to firms of 26 January an eleventh hour admission that the guidance service alone is inadequate to protect the consumer?

Martin Wheatley: No. It is a further articulation of our guidance that already exists as to what is required by product providers. The providers themselves were saying they would

like some further guidance as to what is expected of them, so it was us responding to an industry need that says, “Look, we need a little bit more help in exactly how the rules should be applied”.

Q99 Mr Love: There has been criticism that you should have acted earlier. Indeed the ABI suggested action back in October, and when the Bill was going through there was a lot of discussion about the need for further protection. Why did you not act sooner?

Martin Wheatley: We felt our guidance was enough. It is the industry that has turned round and said, “We would like some more help”. When you talk of action, all we are doing here is codifying what is good practice in the industry anyway, which is to answer some sensible questions when people come to make their decision on their pension choice.

Q100 Mr Love: The consequence of not acting as soon as it became clear that it was necessary is that you are now introducing change that is rushed and ill-considered. How do you respond to that criticism?

Martin Wheatley: I will not say introducing change; what we are doing is codifying what good practice is already. The institutions have turned round and said, “These are the set of things that we do. How do we know that they are the right things to be doing?” We have said, “We have provided a bit of additional guidance, such that when somebody comes along and says they want a single life annuity, you ask them, ‘Do you have a dependent spouse, and is that the right decision to make?’” I do not think it has changed, realistically. It has codified what exists in the market.

Q101 Mr Love: Have you at any point discussed with the Treasury the need for delay?

Martin Wheatley: No, we have not. The Treasury have set the timetable and we are working to the timetable they have set.

Q102 Mr Love: You carried out a retirement income market study, and I came up with some research about engagement with consumers. There has been a lot of debate about this, with some people saying there would be complete engagement with consumers, others saying there would be very little. You seem to be taking through this study a rather bleak view. Perhaps you could just elaborate for us.

Martin Wheatley: So our study was looking back, it was not looking forward to the new reforms. We are very much looking back over whether people have been providing the right level of signposting and guidance to individuals over the last five years. What we found were enough gaps in what had been done that we have asked the major insurers to do a fuller sample to assess whether there is a systemic gap in the provision of this service or not.

Q103 Mr Love: The letter you wrote states that this report identified poor consumer engagement. Can you quantify that? Are you expecting 5% consumer engagement, 95%, or somewhere in between? How bleak is the picture? After all, we have a fairly bleak picture on annuities under current circumstances. How bleak will it be?

Martin Wheatley: The reason for doing the further sampling is to find out that percentage figure—so, how bleak is the picture?

Q104 Mr Love: So what percentage did you come up with?

Martin Wheatley: We have not finished it yet. The work we announced was the start of a further piece of work. It was not the absence of total engagement. It is not a binary question—you are either engaging or you are not—it is, when you engage, how clear you make it to people that there are open market choices, impaired life choices, that may offer them a better return. So it was the clarity of the communication once that channel had been opened that we were concerned about.

Q105 Mr Love: Have you received any industry comment from your letter of 26 January about the changes, the rules that are coming forward? Perhaps you could also answer the question of when the rules are likely to be sent to firms.

Martin Wheatley: Industry comment welcomes the fact that we are going to be making rules in this area. People have wanted more certainty and have been nervous, frankly, about changes coming forward and them getting it wrong in terms of questions. Rules will be made before the new pension reforms come in on 1 April. We have given the industry a fairly clear sign as to exactly what they will be, but the formal making of them will be in March.

Q106 Mr Love: The extent to which you engage the consumer depends on whether the prompts you offer and the questions you ask are meaningful. The experience here has been fairly negative in terms of annuities. How can we be ensured that a robust debate goes on, that consumers are signposted to the appropriate choices they have to make, and it is made clear to them that they need to use the free service or regulated advice before making what will be a crucial decision for their future?

Martin Wheatley: The aim of the rules is to make sure exactly that that happens—so, the hard-wire in the process. So anybody making a choice will be asked, “Have you taken advantage of the Government’s free service, pension-wise? Have you engaged with that?” Then there will be a second level of questions, which are fairly simple questions about whether people want an index-linked or a flat return, if they want an annuity, whether they have taken tax advice, if they are looking for some combination of draw-down. Those are individual circumstances, so people who have a dependent spouse will be looked at quizzically if they are taking out single-life policies.

The system builds in the check that asks people whether they have done that. What it does not do is mandate them to take that advice and make sensible decisions, because this change is about putting decisions back to individuals. So you can go through that entire process, but it is still an individual's decision at the end of that process.

Q107 Mr Love: I fully accept that, but based on the level of disengagement and the low level of financial capability of the consumers we are considering, can you give us an optimistic appraisal? Can you say with some optimism that this is going to make a real difference to those who are likely to be most in need of this advice?

Martin Wheatley: To be honest, the realistic situation is that those people over the last 25 years have structurally under-saved for this decision point, so the real concern is addressed through the auto-enrolment system; that will get people to a point where they have a meaningful decision to make. For many people whose average pot is below £20,000, it is very difficult to make a decision at that point that will sustain you for the next 25, 30 years of post-retirement.

Q108 Mr Love: Let me ask you one final question. There is a lot of concern that the people who have lost out on the annuity issue currently are exactly the same people that will lose out now under the new arrangements. Can you give us any optimism that the changes, the rules that you will be bringing in, will make a significant difference to that particular demographic?

Martin Wheatley: It will certainly give them advice when they may not have got advice—sorry, will give them guidance and access to a conversation that they may not have had before, so they will have a better understanding of their options. I think there will be more products available from the manufacturers who are now moving to have more products available. But whether they will be better served in their retirement is more a factor of how much they have saved pre-retirement than the decision they make at this point. Frankly, that is the biggest weakness we have as of today.

Q109 Steve Baker: Good morning. I would like to turn to de-risking. Notoriously, Syrian refugees were denied bank accounts, which seems only to compound their misery. Can you explain what the FCA's approach is to mitigating problems that have arisen from de-risking by banks?

Martin Wheatley: It is two-fold: one is, we do not believe that de-risking is an appropriate response to the regulations that have been brought forward. So we have communicated that privately with firms, and we will be doing that publicly as well; so we will make a public statement about what we think of the situation.

Secondly, in terms of our enforcement of our rules—our AML rules and Know Your Client rules—we are proportionate in how we look at what firms have done and take account, so there is no blanket approach from us in terms of what we expect firms to do.

Thirdly, and more importantly, we have started to engage very much on an international dialogue because realistically, firms de-risk not just because they are worried about UK regulation; they are worried about global, in particular US, regulation. So we have started the process of talking to the US regulators about the problems that this is creating and what the potential solutions might be.

Q110 Steve Baker: John, did you want to add anything?

John Griffith-Jones: No, sorry—

Q111 Steve Baker: I would like to drill into each of those issues but I will just look particularly at what Chris Woolard said: “Financial services firms need to be able to operate successfully”—well, of course—“that should not be at odds with regulation designed to protect consumers, to promote competition and ensure market integrity”. Those things seem to be absolutely true and very much not to the point. What concerns me is this. You say that it is an inappropriate response. Isn’t it unrealistic to expect a bank to spend time and money individually managing every case when conduct fines now are one of the most material risks to their overall position?

Martin Wheatley: Conduct fines are typically imposed not for genuine administrative errors that somebody made in trying to process a case, but because they blatantly failed to put in place proper systems and controls, or blatantly breached the set of rules. I would separate those two things out. People, in pursuing our rules, should not be worried that they will somehow face very large fines for inadvertent mistakes that they make, genuine mistakes that they make.

Q112 Steve Baker: One of the things we have in the brief is a concern that because regulation is outcome based, insufficient or inadequate account will be taken by you of the process that leads to that outcome, which stands in contrast to what you have just said. Can you see that the banks would be put in a position where they felt they just could not risk the outcome, and are being treated not as a policeman might be in the face of a crime that they did not commit, but as criminals themselves, which again is in the evidence? Can you understand that that is where banks are coming from?

Martin Wheatley: Yes. I do understand that and I have had that discussion with them. So the question we ask them is: what can we do to ameliorate that concern that you have? Partly it is about signalling, and that is why I say we will make a public statement about this. Partly it is about how we and other international regulators will in practice use our powers, which is why we spend quite a lot of time engaging with, in particular, the US regulators.

Q113 Steve Baker: Let me make sure I have understood this. Whereas at the moment it looks like banks will de-risk en masse from certain categories of customer and you say that is

inappropriate—I think that’s right—the other extreme is that, although you wouldn’t necessarily expect detailed management of each account, you would expect some—

Martin Wheatley: Sorry, just to be clear. The Know Your Client rules are that you know your clients, and that is a detailed assessment of each file. It is not a case of saying, blanket, “We accept everybody with these profiles”.

Q114 Steve Baker: Okay, so, to return to where I was a few moments ago, what assessment have you made of the cost for an international bank like HSBC of knowing your client, when we are talking, for example, about thousands—perhaps hundreds of thousands—of people moving out of Syria?

Martin Wheatley: We have not done the specific cost analysis of what it would take HSBC or any other bank because that is part of their core business. It is not an optional part of their business. It is part of their core business.

Q115 Steve Baker: I am sure none of us are in the business of defending HSBC or any other bank these days, but I am just trying to be realistic about the practicalities of knowing the client in detail versus making a blanket decision. I am trying to understand whether there is any motivation that you would identify with within the bank to act in a blanket way because of the rules.

Martin Wheatley: Yes, and the reason we are having this debate is that de-risking is banks acting in a blanket way. I know we have had this discussion here before, but we share the view that it is not a good response and will make potentially significant parts of geographic, ethnic and business classes unbanked if allowed to continue. That is not a good outcome. That is why we are in this process of trying to engage with banks about what it is that forces them to act in that way, and therefore what can we do to change that dynamic.

Q116 Steve Baker: You have said there will be a public statement. When can we expect that and what else will you do?

Martin Wheatley: I think we are trying to do that within the next month—I cannot guarantee—but I think in the first quarter of this year we will put something to that effect; but that only goes so far, and that is some signalling. We would like to see the same sort of signalling come from the US regulators, and there have been some hints that the US regulators are doing that as well. But ultimately it needs to be co-ordinated at a global level, so that is something for the FSB or the G20 to take forward to give it—

Q117 Chair: Can you just say a bit about what the Americans are doing?

Martin Wheatley: There have been a number—

Chair: And which regulators?

Martin Wheatley: Particularly FinCEN, which is the part of the Treasury. So the key players would be FATF and FinCEN as part of the US Treasury; the OCC to a degree as well. They have made a number of statements in the last four or five months that have been recognising this issue and in a sense getting it on to the table. That is quite different from finding a solution to it but I think even the recognition of it is a step forward.

Q118 Steve Baker: You have mentioned several organisations there internationally. Do you feel the UK is adequately represented among each of them?

Martin Wheatley: When you say “among each of them”, we are represented at the levels that are important, and for this purpose probably the FSB is the most important one.

Q119 Steve Baker: Could you explain domestically what is going on? Who is setting the rules domestically and is there any one body in particular which takes responsibility?

Martin Wheatley: Ultimately the Treasury sets the rules. We are responsible for enforcing those rules on AML in regards to financial institutions. We have a significant responsibility in this space but ultimately we look to the Government to set the rules.

Q120 Steve Baker: I am trying to reconcile that with what you said a moment ago about being represented. Are you looking to the Treasury to take the primary lead internationally with the FSB to reach the necessary rules or is there some overlap?

Martin Wheatley: No. To be honest at the FSB level it is more the Bank of England.

Q121 Steve Baker: I am more confused now. If you are sitting in a bank and you need to understand what the rules are going to be, with which you must comply, who are you looking to to understand what you must do?

Martin Wheatley: You would look to us if we are your host regulator in the UK, and you would look to the US if you have significant operations in US markets.

Steve Baker: But the actual origin of these rules—it feels like it is quite a cloud of authorities.

Martin Wheatley: The origin of the rules is the financial action task force—that is where they are driven from—which is a global body. The Treasury has responsibility for defining how those rules work the UK.

Q122 Steve Baker: The single UK regulator as far as the bank is concerned for this matter is you?

Martin Wheatley: Yes.

Steve Baker: Thank you. We took evidence about the money laundering and counter-terrorism financing rules on de-risking and the banks, and the subsequent impact on access to banking. Why, prior to this statement having been made, were the banks acting in this way? This is material to the statement that you are going to make later. Why do you think it is has happened?

Martin Wheatley: I think it is them trying to ride quite a wide berth from falling foul of the rules and the consequences that come from falling foul of the rules. It is as simple as that. Absent a granular and detailed way of responding to it, de-risking is their response, to say, “We had better give a wide berth to the risk of falling foul of the regulator”.

Q123 Steve Baker: Have you discussed with the bank boards where these risks fall in their prioritisation of overall risk to their banks?

Martin Wheatley: Yes, we have. We had that discussion very much with the big international banks. For the big international banks it is very, very high on their agenda. Make no bones about it; they are very, very concerned about the implication of what getting it wrong in this space means.

Q124 Steve Baker: Do you think the overall system is working as the designers of it intended; as the financial action task force intended?

Martin Wheatley: The fact that we are still having problems where the banks are not operating to the standards that have been set suggests that, no, it is not, and I do not think anybody wants the outcome of this to be the de-risking of areas of business. I would say this is still a work in progress. We are not quite where anybody would want to be yet.

Q125 Steve Baker: It sounds like it is both design and implementation in this particular matter.

Martin Wheatley: Yes, I think so.

Q126 Steve Baker: Which side of that coin will you be focusing on?

Martin Wheatley: Predominantly implementation. It would be quite hard in today’s world to say that we should roll back the controls on counter-terrorist financing or anti-money laundering, so I think it is an implementation issue.

Q127 Steve Baker: I have been taking an interest in Bitcoins recently, and one of the things that came up there with the peer-to-peer lender is this issue of money laundering and

financing of terrorism. Have you given much consideration to how money transfers through this peer-to-peer cryptographic network might completely transform the terrain today?

Martin Wheatley: We have started to do some work on that. I would not say that our thinking is completely advanced but it is something we are certainly aware of as a development, and we've started to do some work on it.

Steve Baker: Thank you.

Q128 **Chair:** Have you done a value for money study internally on money laundering regulation?

Martin Wheatley: No.

Chair: It might be worth considering.

Martin Wheatley: We have thought about it. It would be an extraordinarily complex thing to do.

Chair: That is not a reason for not doing it. There is a heap of money being spent on it. We need to know what we are stopping.

Martin Wheatley: There is the question about the optionality of it and at the moment this is a global imposition of a set of rules and therefore, whatever your cost/benefit assessment at a local level, it does not change the global picture unless that work is done at a global level.

Chair: Would you take that thought away?

Martin Wheatley: Yes.

Q129 **Rushanara Ali:** Mr Wheatley, I want to continue on the subject of de-risking. Could you tell us whether the FCA have done an estimate of the number of customers that are being denied banking facilities because of de-risking, and particularly because of the AML and CTF regulations?

Martin Wheatley: We haven't, and we would find it extraordinarily difficult to because I do not think any bank keeps a record of what customer it has not taken on because of something called de-risking. Anecdotally, we hear that it is an issue but it is very difficult to get a grip on it.

Q130 **Rushanara Ali:** But they are using these two particularly, the AML and the CTF regulations, as grounds for refusing bank accounts and surely we need to know the profile of people who are being refused bank accounts, don't we?

Martin Wheatley: Yes we do but, as I say, I do not know if the banks themselves collect the data. We have started having some discussion.

Q131 **Rushanara Ali:** Do you think there should be?

Martin Wheatley: Yes, I think there should be.

Q132 **Rushanara Ali:** Then will you be asking this?

Martin Wheatley: We have started to have the discussion about whether that would be a proportionate request in terms of data, how easy it would be to collect that information.

Q133 **Rushanara Ali:** You understand why I am asking this question, don't you?

Martin Wheatley: Yes, I understand.

Rushanara Ali: There are some groups, some businesses that are finding themselves in this category where banks—because of the earlier questions my colleagues asked, about the fear of hefty fines in the event that the outcome of a decision might lead to them falling foul of the regulations—are stepping away altogether from providing banking facilities. This has come up in relation to charities, in relation to money transfer businesses and in relation to individuals. The perception, certainly among individuals, is that there may be profiling going on on various grounds. This debate has gone on for some two years now and it is not clear what the progress has been so far. There have been lots of discussions but we have not seen any action.

Martin Wheatley: There are two key actions, one of which as you know is an attempt by the Government to create a safe corridor for certain payments to go through, particularly for Somalia, which was one of the higher profile incidents quite early on. That is still a work in progress, but that is progress. The fact that it is now on the agenda of not just UK regulators but the global regulators is itself progress. What we do not have is solutions and I accept that that is frustrating.

Q134 **Rushanara Ali:** Yes, it is frustrating. I was involved with this campaign and what we found was that, while the Government committed to building the safe corridor for countries where we needed safe and legal mechanisms for people to send remittances—which is a huge amount of money, large amounts of foreign direct investment in many developing countries—the cross-border remittance group made a commitment that it would pilot this measure in September but it was delayed to January. It is being delayed again; my understanding is by a year. Do you have any sense of when it is actually going to happen?

Martin Wheatley: No, I had not realised that it had been—

Rushanara Ali: Are you concerned about that?

Martin Wheatley: Yes.

Rushanara Ali: Because—

Martin Wheatley: It was clearly an attempt to try and deal with the problem and to create a model that could be extended to other areas. I do not specifically know why the delay of another year.

Q135 Rushanara Ali: Are you concerned, given the context, that banks understandably being concerned about hefty fines may be being disproportionate in their withdrawal of services to certain groups and organisations? In fact, there are reports that this is driving particularly remittance and money transfer underground, which is likely to create the unintended consequences. According to the Charities Aids Foundation there are real concerns that not having a safe mechanism to transfer money, whether by charities because they are being denied banking facilities or by money transfer businesses, could actually give rise to terrorism financing and individuals are not going to be able to protect themselves when they are trying to physically carry cash in countries where they have business interests or family. This is not something that banks can solve themselves but requires action by the regulators—not just here, as you pointed out, but in the US—and the Government has been too slow to act.

Martin Wheatley: Again, it is not for me to comment on whether the Government is too slow to act. I know that they have tried to create this corridor concept. I do not know the reasons for the subsequent delay. From our point of view, we are very much aware of the issue and we are trying to respond appropriately to it.

Q136 Rushanara Ali: In the light of the recent scandals with HSBC, are you confident that the banks are being straight with customers about their reasons for withdrawing banking facilities, when some of these high profile examples suggest that when it is profitable—as in the case of the HSBC Suisse example—they have gone way out of the way to provide banking facilities. It does not seem to have a great deal of bearing on legalities. “Legalities” is not the exact, correct word, but they will go out of their way to accommodate their customers if they are profitable customers, even if they are questionable customers; but that is not happening with individual charities, individuals or money transfer businesses, even when they have failed to provide the evidence. In fact, there is an issue about transparency and not being willing to provide the evidence on why banking facilities are being withdrawn from these organisations.

Martin Wheatley: When you say am I comfortable, the evidence we have all seen suggests that they are not being as straight with customers. Do bear in mind the allegations made were quite historic allegations. I would like to think that those banks have improved their act now and they are not facilitating it.

Q137 Rushanara Ali: Are you confident that they have? Can you be certain that that is the case?

Martin Wheatley: No, because through the programmes that we run, the inspections that we run, we know it is not always the case so, no. I am confident that it is not the case.

Q138 Rushanara Ali: In that case, can you be certain that when they say they have to de-risk, there are issues with MSBs and certain charities? In fact mainstream charities like Oxfam are having trouble getting bank accounts opened. Given the context of these organisations having to work in very challenging environments, and given the banks are not going to be able to provide the solution, the international community, the regulators, need to step up and step up very fast, and that is not happening. What will the FCA do to push forward and encourage the Government and its contemporaries in other countries to speed up their action?

Martin Wheatley: As I mentioned in answer to the earlier questions, the fact that we are engaged in that debate is a step beyond where we were last time we discussed this; the fact that we will make a public statement—we will put something out quite publicly to talk about our concerns in this space. You suggested earlier the practicalities of collecting granular data about accounts that are not opened or closed because of these concerns. I think we have to be quite careful about how easy or difficult it is to collect that data and whether we get honesty. We will certainly look at that and whether we can get that sort of data as well.

Q139 Rushanara Ali: Yes, but at the moment the banks are saying that the tipping-off rules prevent them from sharing information. So the customers are often being left in the dark about why banking facilities are not being offered to them. You could find yourself being denied banking facilities. It could be because of your ethnicity or religion, and they are not telling you that because there are some other grounds on which they are doing that, or because you are operating in a certain country but there is no further evidence, or you happen to be in the category of being a money transfer business but there is no evidence that you have done anything wrong. In fact some of the money transfer companies—including one in my constituency—have found themselves in this position, but the security agencies will say that the fact that these organisations exist means that people are legitimately able to transfer money. If they did not exist they would have more trouble trying to work out where money is moving and whether it is ending up in the wrong hands. Do you have any reflections on those points?

Martin Wheatley: All I can say is, everything you have said is a concern. I agree that there are problems and the banks potentially turning down or closing clients for no good reason—they may be commercial reasons or they may be competitive reasons. There are all sorts of reasons and they might hide that under the concerns about de-risking. All I would say is that everything you have said, yes, it is a concern and yes, we will continue to do what we can about it, but I do not think we have a silver bullet. I do not think we have the solution on this.

Q140 Rushanara Ali: Does the FCA do any impact assessment on who is being denied banking facilities?

Martin Wheatley: We do impact assessments on all new policy changes. Typically we would do an impact assessment. We have not done one to my knowledge on this.

Rushanara Ali: Would you consider doing it?

Martin Wheatley: Again if I can be cautious with my commitment, because I know the difficulty in collecting the data—so I will take it away and look at what we could do to collect that data.

Rushanara Ali: Thank you.

Q141 **Chair:** This de-risking issue is leading to debanking with great, great social and economic costs. It is driving businesses and individuals out of the formal banking sector altogether, and it is affecting a very large number of people. It is not just those who want to remit money abroad. It is also people who are taking jobs abroad. If ever there is a case of an issue that is a growing problem that will become a big mess, it is this. As a Committee, can we ask you to move this up your list of priorities as high as you can?

Martin Wheatley: Yes.

Chair: Thank you. I think Alok Sharma had a rejoinder?

Q142 **Alok Sharma:** Yes, I just have a few questions on remuneration in the banking sector. The FCA and the PRF of course are putting forward some proposals on how bonuses are dealt with and deferral times. Could I ask you, as part of this have you done a survey of what has happened to fixed pay in the City and particularly can you tell us—if you have done such a survey, which I hope you will have—what is the percentage of fixed pay as a total of remuneration now compared to, say, in 2008?

Martin Wheatley: We have not done a City survey but clearly, as part of our round of discussions with the banks, we talk to them about what the profile has been and what has happened. Anecdotally it has gone from a situation in, say, 2008 where a bonus at a senior level would be four or five times base to something now where it is one times base, but equally base has gone up by at least 100%—anecdotally, I mean we do not have the details yet.

Alok Sharma: Yes, and I think that is reflected across the City where fixed salary levels have gone up. Is that not just going to lessen the impact of your proposals on clawback? The deferral times you are talking about are quite long and I guess banks will then decide the best way to deal with this is to increase fixed pay further.

Martin Wheatley: That is absolutely right. It is not a solution that we would have chosen. This is something where our colleagues in the European Union have decreed that this is the appropriate model. It is not something that we agreed with. I know the PRA have not agreed with it. I know the UK Government did not agree with it. It is the wrong outcome but politically that is the outcome that the EU has imposed.

Q143 Alok Sharma: Do you support the idea of a clawback on fixed pay?

Martin Wheatley: It is too early to say. It is certainly something that would—

Alok Sharma: What is your instinct?

Martin Wheatley: My instinct is that we have lost the tool that we had, which is the ability to claw back a significant component of compensation and, therefore, being able to claw back against fixed pay would substitute for that to a degree.

Q144 Alok Sharma: It sounds to me, although you have not reached a final conclusion on this, that you are sympathetic to the idea of clawback on fixed pay.

Martin Wheatley: What I was about to say is that there are all sorts of contractual issues around whether that can be imposed in practice. So, sympathetic yes, but we are still at the relatively early stages to handle the work.

Q145 Alok Sharma: As a concept, the FCA would be positive if it could be done to claw back off fixed pay paid out to people in the banking sector?

Martin Wheatley: Okay, again we do not have a policy position. To say the FCA “would be positive” I think is putting too much on us. It is a piece of work we are doing at the moment.

Alok Sharma: From the answer, and I can only go from the answer—

Martin Wheatley: No, it is my personal view.

Alok Sharma: —given that is the way you were leaning. What you have not said to me is, “No, absolutely not. It is completely off the table. Fixed pay is fixed pay”. You have not said that.

Martin Wheatley: No.

Alok Sharma: You have been quite sympathetic.

Martin Wheatley: Yes.

Alok Sharma: Okay, fine.

Q146 Alok Sharma: Can I ask, in terms of your proposals on clawback, can you tell us which banks have been supportive and which have pushed back?

Martin Wheatley: If I knew I am not sure it would be appropriate to tell you but in all honesty I do not know which ones. I cannot tell you the difference between the two, but if they had made public comments then those comments are in the public domain and we

will come back to you with that. If they have made private comments I am not sure we should be disclosing their private position.

Q147 Alok Sharma: Let me just ask you, as an industry, have they been largely supportive or not of your proposals?

Martin Wheatley: I think in general terms not. I think you can assume that the industry would not be supportive of any constraint on remuneration.

Q148 Alok Sharma: Do you think the EU bonus cap that has been proposed will end up hurting the City or not?

Martin Wheatley: I think it will hurt the ability of regulators to hold people to account. It will certainly hurt the City.

Alok Sharma: I guess what I am driving at is, do you think it will hurt the ability to hire the right sort of people?

Martin Wheatley: Yes, I am sure it will and at the margin I am sure you will find that traders at Prop desk will say, “Can I be employed in some other jurisdiction rather than within Europe?”

Q149 Alok Sharma: One final question on this is: do you think there is any scope for an international agreement on remuneration in the sector? I am not just talking about the EU. I am literally talking on an international basis. We are talking about levelling the playing field.

Martin Wheatley: In the short term, no, because Europe has set its tune and I think that is where we are in the short term. In the longer term, who knows?

Q150 Alok Sharma: It is not going to happen, basically.

Martin Wheatley: No.

Alok Sharma: No, thank you.

Q151 Chair: We are going to need to persist, aren't we, in trying to explain to our colleagues in the EU just how misguided what they have done is and the long-term deleterious effects to the whole of the continent and not just to the financial sector in the UK? You are going to persist with that.

Martin Wheatley: Yes; we have spoken about it in the context of the banks but CRD4 applies to a much, much broader group of firms and that is the next level that will now be put forward through the EU. We will persist in that. We have very strong views on this.

Chair: Good. Thank you very much for coming to give evidence to us today. We hope we are not going to need to see you very soon. On that will rest sorting out these outstanding issues, mainly about documentation, which are being discussed at the moment. Thank you very much indeed for coming to see us.