



Treasury Committee

Oral evidence: [Bank of England Foreign Exchange Market Investigation](#), HC 956

Wednesday 21 January 2015

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

Questions 1 - 113

Witness: **Lord Grabiner QC**, gave evidence

Q1 Chair: Lord Grabiner, thank you very much for coming to give evidence to us this afternoon. This concerns something quite serious that happened in the bank, which rightly they decided needed investigation. The work that they have done is perhaps partly a reflection of the pressure put on by this Committee to have a more thorough investigation of such allegations and concerns, as was your appointment and the report that you have now produced. We are getting much more transparency as a result. Can I begin by asking you about the process by which you were appointed? You came in at a comparatively late stage. There was already a law firm on the case, wasn't there? Do you know why you were appointed at such a late stage and what led to this change of decision?

Lord Grabiner: No, I do not know.

Chair: Did you ask?

Lord Grabiner: No.

Q2 Chair: Who approached you to take on the investigation?

Lord Grabiner: The senior counsel at the Bank of England, and then I think I had a meeting with the then chairman of the Oversight Committee. Graham Nicholson is and was then the senior counsel to the Bank of England.

Q3 Chair: What questions did you ask them about the role that you were picking up from with respect to Travers Smith?

Lord Grabiner: Whatever the questions were, they resulted in my terms of reference so that the terms of reference are a reflection of my conversation with Mr Nicholson.

Q4 Chair: Yes, that is a very procedural answer. I am trying to get a feel for whether you were exploring the work that had already been done at the time of your appointment to establish what you were expected to accomplish.

Lord Grabiner: As I understood it, the issue that they wanted me to address was whether or not there was any bank official who knew or had turned a blind eye or ought to have known about any wrongdoing in the foreign exchange market, in particular the 4 o'clock fix. At that initial stage I certainly did not get involved in any debate about what had been done thus far by Travers Smith, who I think had been appointed a few months earlier. Of course, once I was appointed, I spent a good deal of time with them and they assisted me in doing the things that are described in my report.

Q5 Chair: It is somewhat curious to appoint one person to do an internal investigation and then, at a subsequent stage, bring in someone else. It may not be untoward but I am just trying to get to the bottom of why this was.

Lord Grabiner: I was not privy to the decision-making at the Bank of England end of the story as to why they decided to do it that way. I was simply approached on the basis of would I lead that investigation.

Q6 Chair: You were looking carefully at the work of Travers Smith, presumably, because obviously there is no point trying to reinvent the wheel. They had obviously done quite a bit of the legwork for you.

Lord Grabiner: Well, they had—

Chair: I haven't got to the question yet.

Lord Grabiner: I am sorry.

Chair: Were you content with what you were looking at when you examined that? Did you think that they were on the case in the right way and as thoroughly as you would like had you been conducting this from the start?

Lord Grabiner: Yes.

Q7 Chair: You wanted to say something else on the other point.

Lord Grabiner: Yes, I simply wanted to say that I think that they were focused very largely in that early period on collating material, bringing it together so far as it could be obtained from the bank or from Bloomberg chatrooms and from telephone conversations and going back through, securing recordings of particular meetings, and so on. Then you have to do a massive fact-finding exercise and document-finding exercise in order to do what then has to be done.

Chair: We might come on briefly to that.

Lord Grabiner: What they were not doing and what they had not done at that stage was to have produced any kind of report or interim report of what they had been doing.

Q8 Chair: Okay. For the sake of completeness, I need to ask you a couple more questions that are procedural in nature. Did the bank or the FCA or any other person or organisation make any attempt to exert any influence on what you were going to say, undue influence or interference in your conduct of this work?

Lord Grabiner: Never at any stage.

Q9 Chair: Did you receive full co-operation from the bank and from the FCA?

Lord Grabiner: At all times.

Q10 Chair: How much were the bank charged for this investigation?

Lord Grabiner: I do not know.

Q11 Chair: How much did you charge?

Lord Grabiner: I do not know.

Q12 Chair: You do not know? You have not been paid?

Lord Grabiner: I do not know that either. I presume I have been. Barristers do not get into the grubby world of negotiating fees.

Chair: Of their pay, they do not—

Lord Grabiner: You know at the end of the year what you have to speak to your accountant about, but you never negotiate your own fees and you never participate in that process. Since I have the best clerk in the Temple, I just leave him to get on with it. That is what he does. If you want to know those figures, I am sure that the bank will provide them to you.

Chair: They are a matter of legitimate public interest and we will expect to obtain them.

Lord Grabiner: I can tell you that I am sure we did a cheap deal.

Q13 Chair: We will find out. Did you provide a public sector discount?

Lord Grabiner: We gave a serious discount that I do know.

Chair: A public sector discount?

Lord Grabiner: I haven't the faintest idea what a public sector discount is.

Chair: One that you give to public sector requests.

Lord Grabiner: You can rest assured that the deal that was done on my behalf by my clerk was a very attractive deal from the employer's point of view.

Chair: We will not rest assured; we will go and have a look.

Lord Grabiner: Take my word for it.

Chair: I do not think we will, no. I think we will go and have a look at the numbers.

Lord Grabiner: Don't take my word for it.

Q14 **Chair:** Mr Mallett left the bank for reasons unconnected to your investigation and he was the only individual you criticised. Is it your view that there is no one left in the bank who should bear responsibility for this?

Lord Grabiner: In relation to the matters I investigated, that is my view, yes.

Q15 **Chair:** Nobody at all really appears to have taken the rap managerially for what you found.

Lord Grabiner: Mr Mallett I think would not agree with you. Mr Mallett takes the rap because I criticise him quite firmly.

Q16 **Chair:** If this other matter unconnected with the investigation had not also come along at the same time, he would still be in the bank, wouldn't he?

Lord Grabiner: When you say the "other matter", you mean the distinct disciplinary proceedings to which he was subjected?

Chair: The reason or reasons unconnected to your investigation that led to his departure is what I am referring to.

Lord Grabiner: Yes. First of all, I do not know what those reasons were and I have never been told what the disciplinary issue is. That is the first point. Secondly, I think your question is: if that had not happened would he still be with the bank? I think the answer to that question is that that would depend upon the view taken by the bank, as his employer, as to the seriousness of the criticism and whether or not his behaviour would justify them dismissing him. That would be a matter for the bank.

Q17 **Chair:** Okay. Did you express a view?

Lord Grabiner: I expressed the view that you see in the report, which was that I regarded his conduct as representing an error of judgment.

Q18 **Chair:** In your view, is that the sort of error of judgment that might or should lead to dismissal?

Lord Grabiner: In order to answer that question, you would have to know what his terms of contract were. You would have to know what the background history of his employment was, whether he had been a good employee, whether there had been any

other problem over the years, and you would have to make a global judgment about that. That is not a question that I addressed. I was not asked to deal with that question and I do not have a particular view on the subject.

Q19 John Mann: It does not look like we have moved on too much over the last six years when someone goes the same day that a report comes out but the report finds that nobody has been involved in any unlawful or improper behaviour. It is an old style of doing business when someone goes the same day, isn't it?

Lord Grabiner: As to how that came about and what the thinking was at the Bank of England end of the story, I am not sure that I can shed very much light on that. What I can tell you is this. First of all, I knew at the outset of my inquiry that there were separate disciplinary proceedings being conducted in respect of his behaviour on some other issue. As I said a little earlier to the Chairman, I was never put into the frame or into the picture as to what those other matters were. Indeed, I had to give an assurance to the solicitor acting for Mr Mallett that I would not hand over to the disciplinary investigation the transcripts of evidence that he was giving to me. So the two issues were kept quite distinct.

My timing was driven not by what was going to happen to Mr Mallett or otherwise. My own timing was actually driven by the FSA position, because it would have been very inappropriate for me or the bank to publish my report in advance of the FSA publishing its conclusions on what was going on in the marketplace. The two were dovetailed, and one of the really good bits of the story is that I was able to work very closely with the FSA and the bank published my report within an hour or so of the FSA publishing its report.

That said, the fact that these things happened literally at the same time is a decision and was a decision for the Bank of England, not for me.

Q20 John Mann: Indeed, and that is the concern that some people have, myself included. Is there anybody who did not co-operate as fully with you as you would wish, either internally or externally?

Lord Grabiner: No. I had complete support from the Bank of England, in relation to any matters that I requested or sought, and I had a very similar excellent relationship with the FSA.

John Mann: And the banks?

Lord Grabiner: Even the banks. You have to understand that I had no power of compulsion, so I did not have the ability to require a witness to attend. In the event, every bank that had a representative at any CDSG meeting willingly provided or authorised a witness to come and see me. I think I ended up interviewing all but two of the relevant bank dealers who attended these various meetings over the several-year period I was looking at. I think there were only two—and I think they were from Japanese banks—who did not attend before me, but I did have written answers to questions I put to them. The short answer to your question is, yes, they were co-operative.

Q21 John Mann: But none of them had documents about the meetings that took place, and yet at the same time found enough to sack people for their actions?

Lord Grabiner: First of all, I have absolutely no knowledge of the decision-making in individual banks as to what led to them either sacking or, I think in many cases, suspending individual traders. That is the first point.

The second point is—you talk about documents—whenever I saw any of these witnesses, I invited them to tell me, first of all, if any such documentation existed and, if so, let me have copies. You have to understand that these meetings happened something like four times a year. It turns out that they were meetings that took place usually over a lunch table, either in some restaurant in the City, or in one or other of the banks depending upon whose turn it was to provide the lunch arrangement. They were basically very informal meetings and the witnesses I spoke to were people who said that they never took notes. I think in one case notes were taken by somebody who said that he would be in the habit of putting something on his computer in the room, but he was unable to find any record of that.

The only real material, in addition to oral testimony that I was given, would have been and was the minutes made by Mr Mallett following the individual meetings. We had minutes. They were not entirely satisfactory minutes because they were very compressed, but those were primarily the near contemporary materials I had to tell me, at least in principle, what had been discussed at relevant meetings.

Q22 John Mann: Isn't this rather fundamental to the problem that is there that there are these informal dinners, lunches, not recorded and not transparent? It then transpires that there is rigging of markets going on. When the issue blows up, people are sacked and they were sacked for it. This whole culture of nod and a wink, deals over dinners, information being exchanged, isn't this at the heart of the problem that there is not a transparency there and that encourages a culture whereby people can act in this kind of way?

Lord Grabiner: With respect, I think it is rather more complicated than that. I can see why you make the points that you make, and it is a way of seeing what happened, but it is not an accurate reflection of what was really going on.

First of all, the reason for these meetings was a mechanism to enable the Bank of England to secure for itself market intelligence. That is what the purpose was of these meetings. There would be a strong informality in these meetings with a view to getting some chatter from the marketplace so that this information could then be collated in the bank and was then passed back, not just through the CDSG chairman, Mr Mallett, but other parts of the bank and other committees that I was not concerned with. They would all funnel information back by way of market intelligence to try to give the Bank of England a view of the financial markets, which they could then interpret and pass around to relevant interested parties in either a daily or a weekly communication, including, I think, to Downing Street. The market intelligence collection process is what that was all about.

But more importantly in relation to your question, from what you have said, the implication is that there were improprieties going on at these meetings and it is very important for you to understand that that is not the case. The point about those meetings—

Q23 **John Mann:** That is not an implication that was there and neither is it one that you can draw.

Lord Grabiner: No, no, no, I—

John Mann: No, no, no, no, no, the implication that is there is that there is an informality built in, without recording, without transparency, and it is that that allows market manipulation to take place. That is the issue and you have not addressed it in your report.

Lord Grabiner: No, because, with great respect, I think it is completely irrelevant and wrong. The point about the informality at these meetings was that it has nothing to do with manipulation or wrongful behaviour in the marketplace. That is the point.

Q24 **John Mann:** How do you know?

Lord Grabiner: Because I am entirely satisfied that nothing passed in those meetings that revealed impropriety of the kind that was identified by the FSA. That is why.

Q25 **John Mann:** How do you know?

Lord Grabiner: Because I am satisfied—having conducted the investigation—that that kind of conversation never took place at the CDSG meetings.

Q26 **John Mann:** But you do not know what the disciplinary procedures are in those individual banks. That was not within your remit.

Lord Grabiner: No, of course it is not and it is not within yours either, with great respect. We have no idea, sitting here now, what the individual reasons in individual banks for sacking or suspending individual dealers were all about.

Q27 **John Mann:** No, but the informality and the system informality, why is there no escalation policy within the Bank of England?

Lord Grabiner: From memory, the only time an escalation policy was introduced was 1 August 2012 and the escalation policy was then put in place. There was an escalation policy in respect of other matters not governing this particular marketplace, because a peculiarity of the FX market is that until now it has not been a regulated market. I had this discussion in great detail with Mr Mallett, for example. Mr Mallett's view was that he did not need an escalation policy because he would exercise his own judgment as to whether or not he would elevate some point that arose in the course of his daily business. In the event, when the formal escalation policy was introduced in August 2012, he thereafter failed to escalate the matters that are the subject of my report. Whether there was an escalation policy in place or not would not have made any difference to Mr Mallett's behaviour, and that is the key reason why I was critical of his judgment. I thought he had poor judgment and that is what I have said.

Coming back to the substance of your point, which is the informality of meetings, of course in a perfect world there would not be informality. There would always be formality

and there would always be excellent recording of what passed in meetings. In fact, if the meetings were intended to be of an informal nature for the purposes of passing or securing market intelligence, then that is not quite the same thing as a bunch of dealers working together in collusion trying to beat the market in an illegal fashion. That is an entirely separate matter, and that is not what I found through the CDSG investigation that I was conducting. I think it is quite dangerous to assume that because of the informality in the CDSG meetings that that gave rise to what was going on in the marketplace. I do not accept that.

Q28 John Mann: So culture of behaviour is not relevant then?

Lord Grabiner: It is relevant, but your description of culture of behaviour covers both what was wrongfully going on in the marketplace and what was going on in CDSG meetings. They are two quite distinct things and I do not accept for a moment that the informality of the CDSG meetings gave rise to the gross improprieties that were identified by the FCA—as it now is—in the marketplace.

Q29 Alok Sharma: Lord Grabiner, on this issue of the informality of these meetings, would you say that in hindsight it would be better if going forward such meetings were not informal but were formal? Obviously, as Mr Mann has highlighted—and I suspect people watching this as well will conclude—when you have a public body involved a level of formality is expected in its interactions with market participants.

Lord Grabiner: As a lawyer, my own experience is that after the event we are always looking back to see what happened previously. The first thing we want to look at is contemporary material in order to find out what happened and who is telling the truth. Of course, as a lawyer, I am always in favour of formality wherever possible. Sometimes in a situation—and I suspect it was the situation here—informality was the order of the day. I think they only had meetings on Bank Holiday days in America so that they could make sure that people attended, and I am sure that the relationships were very friendly relationships with a view to trying to give the Bank of England the chance to get information that would not be generally available. The informality is understandable. In a perfect world, it would be better to have full records.

Q30 Alok Sharma: You said as a lawyer. As a very experienced lawyer, I am sure what you would also do quite regularly is write file notes after a meeting. Certainly, when I worked in the banking sector, if you had an informal meeting you still went away and wrote a file note to yourself if for no other reason than to keep on record what had been said. I just put it to you again: with hindsight do you not think there ought to be some mechanism to formalise and have recorded the information that is given at these meetings?

Lord Grabiner: First of all, the answer to your question is, yes, I do not have a problem with that at all and I think that is a sensible way to conduct business. Secondly, I asked every single bank representative—that is to say the commercial banks and the investment houses who were coming to give evidence to me—what the internal rules were for recording the meeting. I said to each witness something along these lines, “You attended the meeting on such and such a date in whenever. What was the practice in your bank?”

Did you have to make a note of what was said and pass it back down the line and/or did you have to put this into a central bank so that one would know what happened at the meeting?" From memory I believe that in every single case the answer was "no". The most I got from any of these individual banks—and we are talking about all the major world banks—was that the individual said to me, "If there was some issue that arose in the course of the CDSG meeting that I thought I ought to discuss with somebody, I would go and talk to my line manager, but sitting here now I cannot recall that there were any matters that I did specifically report back". In every single case, there was no documentation that they were able to produce.

Q31 Alok Sharma: Given hindsight and given the environment that we are in now, would you agree that the internal mechanisms in banks should allow for all of this stuff to be formally recorded as well? The world has moved on and there is an expectation—both from the public and by colleagues here—that these things are much more formalised, particularly within the banks themselves in terms of their procedures.

Lord Grabiner: I could not possibly disagree with that. You see, the point is that that depends upon the governance arrangements within individual banks but, as a matter of practice, I think nobody could reasonably disagree with that suggestion.

Q32 Alok Sharma: Before you started this investigation how much knowledge did you personally have of the FX market?

Lord Grabiner: I have done lots and lots of commercial cases where a foreign exchange transaction would have been part of the story.

Q33 Chair: But how much do you really know about it? Had you ever been on a trading floor before or sat for an afternoon watching what goes on, for example?

Lord Grabiner: Well, they do not have that anymore. It is all done electronically now.

Chair: Yes, that is true.

Lord Grabiner: When I first came to the Bar—

Chair: There were trading floors for most of the time that you have been in practice, so I am asking you: have you ever sat on a trading floor.

Lord Grabiner: No. I have viewed trading floors in particular on the commodity exchange and I have viewed trading on the metal exchange, yes.

Q34 Chair: Just reflect for a moment on the question that Mr Sharma is asking because it is an important one. He is asking you what expertise you brought to the piece in the beginning before you started the investigation.

Lord Grabiner: I think the expertise is, first of all, as a commercial lawyer and, secondly, as somebody who would conduct a judicial exercise to get to the bottom of the story but having an understanding of commercial matters. Insofar as I needed explanation of the way the market worked, I did have access to an expert who did advise me about the way

the market worked. The real exercise as to what was going on in the marketplace was being done not by me but by the FCA.

Q35 Chair: The correct answer to Mr Sharma's first question is "none", isn't it? You did not have any particular expertise to bring to the piece on the conduct or the workings of the foreign exchange market?

Lord Grabiner: I have never traded through Bloomberg or on the foreign exchange market.

Chair: That is not the question. Do you have expertise in this field, "yes" or "no"?

Lord Grabiner: I believe that I have a great deal of expertise in this field, yes, because I have been doing—

Chair: In the field of foreign exchange markets?

Lord Grabiner: Will you let me answer the question? I have been doing—

Chair: You are being allowed to answer the question. We are trying to get an answer to the question you are being asked.

Lord Grabiner: Yes, I am trying to answer the question and I think interruption does not help much. I have done commercial law cases for a very large number of years, the large proportion of which were concerned with commodity dealing of one kind or another. I have not sat in a marketplace and traded myself, but I know an awful lot about what we are discussing.

Q36 Alok Sharma: Lord Grabiner, in terms of the expert that you turned to, can you share with us who this expert was and how often you consulted with this expert during your investigation?

Lord Grabiner: I think I only needed one meeting. I sat in the meeting and listened, and I think it was somebody from the Bank of England. Let me just check because it is a long time ago. Yes, there was an independent expert called Toby Williams, who was an independent FX person.

Alok Sharma: You spoke to him once or you had one discussion?

Lord Grabiner: I had one meeting with him, yes.

Q37 Alok Sharma: Reflecting on what the Chairman has also said, can I suggest that, again, people watching this will be a little bit surprised that there you are appointed to this role and, yes, you have commercial experience but not the technical experience in this particular field, yet you consulted the technical expert on only one occasion.

Lord Grabiner: Because that was all I needed to know in order to do the job properly. This happens to me in every case I do. Every case I do has some technical angle to it. I get advice on it. We might need to call an expert to argue the point for us in court, but essentially that is what I do.

Q38 Alok Sharma: Could I briefly touch upon one other point, which is the relationship that you had with the FCA? I think you have said in testimony today that you had an excellent relationship with the FCA; you worked closely with the FCA. Who was your main counterparty at the FCA that you spoke to?

Lord Grabiner: The person in charge was Tracey McDermott and I had meetings with her both in my chambers and at the FCA offices down in Canary Wharf.

Q39 Alok Sharma: Can you recall during this investigation how often you met with her?

Lord Grabiner: I think we met on about three or four occasions and I think we also spoke on the telephone on a few occasions; a couple of occasions maybe, from memory.

Q40 Rushanara Ali: Lord Grabiner, I want to turn back to the evidence-gathering process. In particular, given that the evidence and the hard written evidence was not very comprehensive, do you feel that you were able to do a complete, full investigation because of the limited range of information? Also, in relation to the chatroom messages, the Bloomberg chats and messages are only available from 2007 onwards and for Reuters chats from 2009 onwards. Could you reflect on some of the barriers that you might have experienced given the incompleteness of evidence?

Lord Grabiner: Whatever was there I am sure we got to. It is always the case in any judicial inquiry investigating a factual story that there are inbuilt limitations in the availability of material. In relation to this, you can see from the figures that are given in the report that we did have access to a huge amount of telephone material, electronic material, email traffic, and I am quite confident that they did a very, very good exercise on that. You have seen one or two of the transcripts. One in particular that I exhibited to the report is the conversation with Mr O’Riordan, which reveals very clearly the thinking of Mr Mallett. A document like that is the result of the hard work of trying to detect it. In a perfect world you are never going to get a 100% hindsight picture, but you do as best you can. I do believe that the bank and the solicitors—who did a very good job here—did access whatever material there was in a real way.

We also agreed search terms in relation to electronic material with the FCA. We devised our own research terms. I do not know if you are familiar with the search term mechanism, but we did devise our own search terms. We then agreed those search terms with the FCA before doing the exercise. It was a continuing process and there were occasions when we provided the FCA with documents we had found and vice versa. If they found a piece of paper in their work with the banks or a telephone conversation that was relevant to the matters I was investigating, they passed it to us.

Q41 Rushanara Ali: That said, I wonder if you could reflect on whether it concerns you that there is incomplete information. Going forward, what would be the lessons in terms of recording material information? Just picking up on the earlier discussion, does it concern you that the bank lacks a sufficient collection of records of information and what could it do

in future to make sure that this is a historic problem rather than one that could be ongoing? What are the lessons from this experience?

Lord Grabiner: You said “the bank”. Did you mean the Bank of England—

Rushanara Ali: Yes.

Lord Grabiner—or the other banks? Whatever the Bank of England had, I am not sure that it had full recorded message systems. I do not remember how long back that system went. Apparently, at that stage—and this is historical as you rightly point out—it depended upon the individual and I think on the seniority and the function of the individual as to whether or not the recording mechanism was there. Obviously, again, just as with the point that was made by Mr Sharma so I would agree with you that the more recording systems you have available, of course, the more prospect there is that you are going to get people to behave themselves. Mind you, some people do forget. Mr Nixon forgot that he was taping all the people in the Oval Office. One hopes that this is going to be a good discipline for people to behave properly. Obviously, the better the recording systems and the longer the material is preserved the better, but I am afraid in life generally, and certainly in most entities, there is always some episode that is not reflected in a contemporary document. It does happen.

Q42 Rushanara Ali: Yes, I agree, but as you say, there are ways of avoiding things happening that are not unwitting or unintended. There needs to be more effort to learn from what went wrong.

Lord Grabiner: I am sure that is absolutely right. For example, I am quite sure that whatever happens with the CDSG or equivalent, depending upon the inquiry that is now being conducted by Dr Shafik, it will be necessary to make sure that the meeting notes or records of meetings will be brought out properly and will be more lengthy and tell you rather more than the sort of opaque stuff that Mr Mallett was producing from time to time.

Q43 Rushanara Ali: Yes. Can I turn to the dismissal of Mr Mallett? That was announced by the bank on 12 November, the same day as your findings being published. Were you surprised by the timing of that announcement, given the bank’s efforts to stress that it was not related?

Lord Grabiner: I was neither surprised nor otherwise. I had nothing to do with that process at all.

Q44 Rushanara Ali: Okay, thank you. Just one final question: the Oversight Committee asked you for recommendations to improve process and procedures within the bank in the light of your findings, but they did not ask you for recommendations about what action should be taken against Mr Mallett or for other officials at the bank. Did you provide any informal advice?

Lord Grabiner: No. I did not make any judgment about the impact of the seriousness of my criticism on the distinct question of whether or not that was—to be crude about it—a sackable offence.

Q45 John Thurso: Lord Grabiner, referring to the Bank of England, what are the lessons that should be learned by senior managers—those above Mr Mallett—in respect of the risk that you revealed in your report as to how they should change their systems or manage that in the future?

Lord Grabiner: The key problem in this case was that Mr Mallett entertained some serious concerns about the exchange of information that he suspected was going on in the marketplace. He suspected that if he ever had to have a debate about what was going on in the marketplace, a regulator would be very concerned about it. Having decided that that was his state of mind—and you find it through a little period of time, independently of what happened in the CDSG, but based upon his own telephone conversations that we were able to find—it was apparent that, although that was his concern, he kept it within his own breast. He did not reveal it to the people below him and he did not reveal it to the people above him. For example, he was a regular attendee at the immediately superior committee, which was the FXJSC. That meeting was regularly attended by somebody from the FSA, as it then was, but at no stage did he go to that committee and reveal his inner concerns. Not only did he not go to more senior people in the bank and he did not go to the regulator, but he kept it to himself. He was conscious of the fact that if at some stage he was going to have to have a debate with the regulator about this, he was going to be embarrassed.

I am not quite sure how you deal with that because it is his personal failing and, with the best will in the world, every business works on a delegation basis. You appoint somebody as your chief dealer, which is what his position was, he works for the bank for many years—no doubt very successfully; I do not know the detail of the history of his employment—and you assume that the person there is doing the job properly. In fact, if he entertains a concern and he keeps it to himself, you cannot detect it. That is the reason why my conclusion was that it was not appropriate to criticise people above him or below him because he kept it to himself.

As to how you can deal with that in the future, I think this is a very difficult problem and I think all businesses have this problem. You cannot know, especially in a big business, what is going on in somebody's head necessarily or, indeed, what might be being said privately in some coffee shop or wine bar. It is a very difficult problem. What you must do is to make sure that you are appointing people of the highest calibre, that you are regularly training them and that you feel comfortable that they are doing a good job with regular assessments in the modern way of governance as it should be. I am not quite sure what else you can do. There are an awful lot of cases going on in court, as we are sitting here now, where the reason the company is in court is because of the grave behaviour, hitherto undetected, of somebody elsewhere in their system. I am afraid it happens all the time.

Q46 John Thurso: It does and it is a question that I am particularly interested in, in part because there are parallels in some of our other inquiries. We have the problem that the FCA had itself with its insurance.

Lord Grabiner: Yes, indeed.

John Thurso: I asked questions there relating to how you account for people's actions after they have been delegated. Also, having been a practitioner on a number of company boards over the years, how you deal with that is a challenge. Can I invite you to reflect on this? If you start at the top, the board is looking for big risks and looking to mitigate those and it is looking to possibly cross-check its culture. Is the culture at risk in an organisation because people think in a certain way? There is a Virgin way of doing things or there is a BT way of doing things or whatever. Is the culture one that might make people susceptible to act in one way or another way, which could be good or bad? There is then the fact that everybody who is appointed to something, and has responsibility for the next level, has a particular responsibility to think about what might be happening and to try to make some effort to see whether it is or is not happening. I wonder if in looking at this you had looked at the people—for example, Michael Cross or whoever—who were dealing with Mr Mallett. Would it be reasonable to expect him to have had a managerial relationship such that what Mr Mallett was holding into himself might have been easier to get out? Is it simply—as your report would indicate—that Mr Mallett made a judgment that was wrong, end of story? It is a longwinded question, but it is about where the learning process should begin for managers above the person whose judgment has been exercised.

Lord Grabiner: I do think that continuing professional education is very, very important. It is a much more modern concept, but all the professions now adopt it—my profession does; the medical profession does; the teaching profession does. These are all terribly important. There is absolutely no reason why a similar approach should not be adopted by the Bank of England, and I am sure that it is being done. It may be in the light of this experience that that is being well taken into account in trying to do something about this for the future.

In this particular case, for example, with Mr Cross, the person you identify who was, I think—yes, he was—the immediate line manager to Mr Mallett, there is no suggestion at all that he ever revealed it to him. They probably sit just a few yards away from each other in the bank and have known each other for donkey's years. I think it is a very difficult issue.

Q47 **John Thurso:** Was there not an e-mail where Mr Mallett was asked to respond to the things that keep the bank awake at night and did he not in that make some—albeit rather obscure and far down the list—reference to the issue? Therefore, the question is: is it part of the culture because Mr Cross did not pick up on the potential importance?

Lord Grabiner: He did not tell Mr Cross what his real concerns were. I remember the passage that you are talking about. Mr Cross was going to give a lecture somewhere and he asked for a little bit of a briefing—it is in paragraph 71(a). Yes, you are absolutely right about the “What keeps us awake at night”. As you can see, he gave him an answer—and I quote the passage very precisely—but what he never does is to reveal his innermost concerns. I can take an educated guess as to why he behaved in this way.

Q48 **John Thurso:** May I invite you to do that?

Lord Grabiner: First of all, I think that he felt that he really knew this business backwards and forwards and he was in control of it. Secondly, it is an unbelievably enormous

marketplace—I think the latest figure is \$5.3 trillion a day on the 4 o’clock fix. This is a massive market, all on FX trading—on the global amount of FX trading, not just 4 o’clock. I do think that he probably thought that nobody could move this market. In other words, even if there were impropriety going on out there, you would never know—even if you got half a dozen traders to work together in a collusive way, of the kind identified by the FSA—if there wasn’t a tsunami coming the other way, because the Chinese Government had decided to bet against some particular currency where you were trying to produce the opposite and equal result. I think he thought that it would be a very, very impractical thing to manipulate this marketplace and it may be that that is what partly drove his thinking. Whatever it was, in my view it was a poor judgment.

Q49 John Thurso: I remember Lord King after the LIBOR scandal, when still Governor, giving evidence. I paraphrase, but it was roughly along the lines of “Who would have thought it was possible to game LIBOR? None of us believed it was possible.” It is a bit the same thing. A small amount of trade can be fixed. It might not affect the total market, but it can be profitable. Therefore, if what you are saying is that he was—if I may use the phrase—being somewhat arrogant and perhaps having a greater belief in his ability than was the case on the one hand, and on the other hand did not believe you could do anything to the system, which was another big misjudgment, I would ask the question: should there be appraisal systems in place in the bank, as there are in many other activities, that might have a chance of picking those sorts of things up?

Lord Grabiner: As you say, whatever can be devised to pick them up obviously should be. I think there is a very important difference between what was going on in the LIBOR market and what was going on here. Here you have a proper marketplace with people going in and out all the time. In LIBOR people were supplying bent figures into the system and were producing a bent result.

Q50 John Thurso: Absolutely. The parallel I wished to draw was that very senior people believed it could not be done. That was it.

Lord Grabiner: No, I completely agree with you. I absolutely agree, but it is a very peculiar marketplace that we are now discussing, the FX market, and a very peculiar sized market as well.

Q51 John Thurso: Last question, Chairman. Clearly there are lessons in here. You have made some recommendations, particularly—

Lord Grabiner: Page 40 onwards.

John Thurso: Yes, and one in particular is regarding escalation policy and so forth. Should we be asking the bank to go further than your recommendations, to think through its management policies with regard to appraisals and with regard to its human resource management to avoid the trap that sometimes very intelligent professionals fall into, which is that, because of their intelligence and knowledge, they believe they do not have to be systematic in man management in the way that most companies would? Would that be something we should explore?

Lord Grabiner: I do not want to dodge your question, but the truth is that I was not looking at the bank's governance structures and their appraisal mechanisms. I do not even know what they are. What I do think is that this is a very bad example of an individual in a position to have done something about this but for reasons best known to him he chose not to. That was a very poor judgment.

Q52 Mark Garnier: Lord Grabiner, in your report you expressed concern about the bank's increased appetite for market intelligence, basically to allow the bank to be able to read the market better in order to try to assess risk to the economy and all sorts of things. What I am slightly confused about is how you differentiate between what is normal market intelligence, which any foreign exchange trading desk or any normal bank would look out for, and that market intelligence that the Bank of England is looking out for, which might or might not constitute insider dealing if that information was in the wrong hands.

Lord Grabiner: There was absolutely no evidence at all that any information that was passed to the bank was improperly used.

Q53 Mark Garnier: Can you give me an example? Having been an equity guy in an investment bank, clearly we were very keen to know what was going on in the market. Some of that information would just be the general market intelligence of what is happening in the order flows, the type of stuff you see on the market floor—this was a few years ago, admittedly—and others would absolutely be insider dealing. This would be information that would be subject to restrictions—for example, directors' dealings. It could be information that you might have wind of before an announcement is due out, that type of stuff, which is also market intelligence, but is a very different type. I am trying to get a flavour from you of how you differentiate between one and the other.

Lord Grabiner: I am not going to be very helpful on this, I suspect. What I do know is that what the Bank of England meant by market intelligence was information that was not publicly available. That would be the sort of information that, because it was the Bank of England, individual traders or dealers would be prepared to reveal, for example, in a conversation with Mr Mallett through the Bloomberg process. He would get that information and if it was information that was of some significance, in terms of its impact upon the operation of the UK economy, on the financial markets or whatever, that information would be digested and then passed backwards and upwards.

Q54 Mark Garnier: This is something where somebody at bank X could feel that there is a significant order coming through? It could be several billions on the table or something, and he feels that it needs to be brought to the attention of the Bank of England by way of that?

Lord Grabiner: Yes.

Q55 Mark Garnier: Okay, that is very helpful. You will also note that the bank's systems and controls have not kept pace with the change of role in terms of increasing and

trying to draw out this market intelligence—this being insider dealing type of market intelligence. To what extent do you think the Bank of England and its officials are at risk of falling into—unwittingly maybe—the trap of being guilty of insider dealing by using that information?

Lord Grabiner: It could not conceivably arise, because there is absolutely no evidence of that at the Bank of England itself, which deals on a very, very narrow basis; for example, it did not deal in the 4 o'clock fix. The Bank of England takes an instruction from the Ministry of Defence to procure dollars to pay for some big American contract or whatever, so it has a very specific function to perform for different Government Departments, but it was never using information for the purposes of trading off the back of it, which would be a classic example of insider dealing. There is absolutely no evidence that any such thing was going on at the Bank of England.

Q56 Mark Garnier: Fair enough. What about a disreputable trader who might be tempted to—

Lord Grabiner: No evidence at all. In all the trading activity of individual traders within the Bank of England—it has its own trading desk—there is no suggestion, and I came across no such suggestion, that the Bank of England traders did other than act entirely consistently with their instructions and give effect to what they were asked to do. The Bank of England traders were not, for example, speculating in the foreign exchange market. That is not what the Bank of England does.

Q57 Mark Garnier: No, but their friends might have been. That is my point. I entirely agree and I certainly would not want to level any criticism at any individual working anywhere that they would not be as honest as the day is long. Equally so, any regulatory regime, whether it is internal regulation or external, has to create a framework around their traders or their active executives to avoid them stepping out of the envelope of what is acceptable and what is not. You suggest that the systems and controls have not always kept pace with the change of role. What I am trying to get from you is: do you think that that envelope that should have been created around those traders is sufficiently tight to not allow any dishonest activity, which could include a trader having information that could be useful to a chum of his where they are working in concert with each other?

Lord Grabiner: There is absolutely no evidence that this ever happened at all.

Q58 Mark Garnier: No, I agree there is no evidence that it ever happened. What I am looking for is: do you have evidence that the systems could not allow it to happen? It is a different question.

Lord Grabiner: Let us take an example. Suppose that a Bank of England dealer got some information in the course of his daily work and then phoned up a chum of his or met him in a wine bar at the end of the working day and passed the information to him. Then the third party trades off the back of that information. It is very, very difficult to deal with that. First of all, his telephone lines would have been monitored and would have been recorded and the recordings would always be available or should be. Secondly, he would be barred from using or having available to him a mobile telephone in the trading room. It

is back to the point that Ms Ali was mentioning to me a little earlier, which is: how do you stop the rogue? It is a very, very difficult question.

May I say that if you slightly change the story and go on to what was going on in the marketplace that the FCA was looking at and what it found, what was happening there was that these traders between them—not Bank of England traders, but bank traders—were exchanging confidential information with each other and then trading off the back of it. That is a pure piece of insider dealing, all designed to move the fix illegally. That was not going on in the Bank of England. I do not have a concern about that bit of the story, because I am quite confident that they would have had in place whatever controls you could have in place to deal with that kind of problem.

Q59 Mark Garnier: Could you give us an example, perhaps, of some of those controls?

Lord Grabiner: For example, I am sure that all the telephones are regularly monitored there. I am sure—

Q60 Mark Garnier: When you say you are sure, have you seen evidence of this? Forgive me if I seem as though I am dancing on the head of a pin on this, but it is quite important. The Bank of England is a very, very important institution and absolutely needs people to trust it in every single way. Obviously you have done an investigation into this to look at these problems. I am personally convinced that everything you are saying is right, but it is all about proving it to a general public out there that is cynical about banks. If there is a situation where people can be worried that the most important bank in the country, the central bank, has failed to get systems to make sure that it is completely above all of this, then you have a problem, not just with the wider banking community but the central bank as well. That is why it is incredibly important that you can demonstrate to us with evidence how you know for a fact that this cannot happen.

Lord Grabiner: The short answer to your question is: I do not know for a fact. The reason I do not is because I was not investigating that question. The evidence before me was that there was no evidence at all that the bank dealers had behaved in this way, and I do not believe that they did.

On your distinct point, which is, “What can we do about this?” the answer is—and it is not a very helpful answer—whatever can possibly be done, scientifically, electronically or otherwise, or by education and training, should be done, obviously. There was not a hint of this in terms of the dealing behaviour of the Bank of England. That is why I said a little earlier that I was satisfied that this was not going on. I cannot prove that, but I believe that to be the position. It was not the subject of my investigation.

Q61 Mark Garnier: If I would ask one last question, your report criticises Mr Mallett for not distributing relevant market intelligence that he came up with. To what extent could this criticism basically affect the future willingness of subsequent people in the same position as him? If there is a potential that you could be accused of insider dealing or you

have too much market intelligence or there are contradictory accusations of different wrongdoing—either you do pass it on and you could be accused of insider dealing or you do not pass it on and you are accused of withholding valuable information—how do you think that is going to affect the dissemination of market intelligence to the right places at the Bank of England?

Lord Grabiner: I agree. I think that one of the obvious consequences—indeed, I saw it in the course of my inquiry—was that some of the banks that came to see me told me that they were now prohibited from participating in Bloomberg conversations, period. Others were allowed to do so, but on a very, very strictly controlled basis. You are absolutely right that, in the light of this whole story, the expectation now I think would be that banks will be very wary about what they say and what they do not say, first of all, to each other and, secondly, to the Bank of England.

As I said a lot earlier, one of the curiosities of this marketplace is that it was not regulated. That is a peculiarity of the market. Of course, quite often unregulated markets do rather well, but leave that aside. The fact that it was unregulated meant that people did things that they did not give too much thought to. They just got on with it and did not regard that as being inappropriate or wrong. Individual banks, when they had a conversation with the Bank of England, certainly knew that the Bank of England was not the regulator, but they were willing to reveal to the Bank of England things that, for example, they would not have revealed to each other. They took the Bank of England to be the regulator, though in fact I have put this question to all the witnesses and they said, of course, “We know that they weren’t the regulator, but we were willing to communicate market intelligence to the bank because we knew it was going to be used for the national interest,” to put it shortly.

I suspect that you are absolutely right: the effect of this will be that the source will dry up because banks will no longer permit their traders or dealers to participate in conversations with the Bank of England for fear that they might land themselves into some regulatory problem. I am also quite sure that the individual banks have all tightened up their internal regulatory arrangements in light of the very heavy fines that were imposed under the deal made with the FCA.

Q62 Mark Garnier: That is quite a profound statement. You are now suggesting that the Financial Policy Committee could be deprived of information during something major—we have seen it in the past: we saw big funds during the crisis in sterling with the ERM crisis in the 1990s. Now you are suggesting that, were that type of thing ever to happen again, it is unlikely that the Bank of England would get that intelligence.

Lord Grabiner: Or if it does get it, it may have to get it in some other way from somebody else. There is no way in which the bank could require somebody to provide it with information on a compulsory basis, I don’t think, and I do suspect that—and this is just a guess—these sources of information will inevitably dry up, because these banks that have paid out heavy penalties have been accused of not having in place proper mechanisms to regulate the behaviour of their dealers and traders. One of the things that will dry up will be open communication on the Bloomberg chatroom.

Q63 Mark Garnier: One of the secondary casualties of this debacle is that the Financial Policy Committee is deprived of information that could be used in a financial crisis, potentially?

Lord Grabiner: I can see that it might well be, yes.

Mark Garnier: That is very helpful. Thank you very much.

Q64 Mike Kane: Lord Grabiner, can I carry on slightly with regulation? Whether the FX market should be regulated or ought to be regulated was outside the scope of your investigation. Nevertheless, having now done your investigation, do you think there is room for regulation within this market?

Lord Grabiner: The answer to that question must definitely be yes. One of the concerns is not to throw the baby out with the bathwater, but the mere fact that the behaviour that has been identified by the FCA was in fact going on demonstrates that there needs to be some regulation of this marketplace. I would not disagree with that, but that is my personal view. As you rightly point out, that was not what I was investigating.

Q65 Mike Kane: Of course, but where to begin? It is a \$5.3 trillion market a day.

Lord Grabiner: Trillion, yes. I think this is being looked at, at the moment, by the FCA. This is the subject at the moment of Dr Minouche Shafik's investigation, the Fair and Effective Markets Review, and I think she is due to report in March or June of this year. She is looking at this.

Q66 Mike Kane: Are you contributing to that report at all?

Lord Grabiner: I have not been asked to, but she is conducting that exercise and, of course, she will be working in conjunction with all the people who feed the information to her. I think this question you have just put to me is probably more appropriate to put to her, at some stage anyway.

Q67 Mike Kane: I know, but if you could see a direction of travel for the recommendations, what would that direction be?

Lord Grabiner: My own view is that you cannot leave a market of this size in an unregulated form. You do need to have a careful look at it, but what you must not do—and this is a problem that faces all proposals about regulation—is undermine the valuable marketplace that you have created, because if you make it too expensive or too complicated, it will end up in Frankfurt or New York or somewhere else and then UK plc loses out, which is the worst thing in the world.

Q68 Jesse Norman: Apologies for being late to the session, Lord Grabiner. You have said that Mr Mallett did not escalate a particular issue relating to the fixing to an appropriate person and for that you think he should be criticised. That is in your report.

Lord Grabiner: Yes.

Q69 Jesse Norman: You have reviewed all the information and you have judged that he should be criticised on the grounds of the path that he has taken.

Lord Grabiner: That's right.

Q70 Jesse Norman: You have included in the report several recordings. Did you listen to the recording yourself or did you just read the transcripts?

Lord Grabiner: No, I read the transcripts.

Q71 Jesse Norman: So you would not have been aware of any nuances in the call unless they were included in the transcripts.

Lord Grabiner: No, and I think these transcripts were provided, for example, to Mr Mallett and to any other relevant witness who was party to it. There was never any debate about what was in the transcripts. They speak for themselves.

Q72 Jesse Norman: Sure, but there might have been a debate about the way in which they could be interpreted.

Lord Grabiner: Is there a particular point you want me to focus upon?

Jesse Norman: Yes, there is; thanks for raising it. The one I want to look at is the phone call on 3 October 2011. You will recall that that is a telephone call between Mr Mallett and a trader, with Mr O'Connor listening in on the call. The trader is very concerned about the activities of brokers in banks around the 4.00 pm fix and is trying to raise these concerns with Mr Mallett. Do you have it in front of you?

Lord Grabiner: Would you just bear with me for a second?

Jesse Norman: Yes, of course.

Lord Grabiner: This is paragraph 56.

Jesse Norman: In your report—let me just check—yes, paragraph 56, that is absolutely right.

Lord Grabiner: The whole of the exchange is set out there.

Q73 Jesse Norman: That's right, exactly. Let us just look at that. That is a call that has been provoked by a trader. The trader said, "I want to talk to you, Mr Mallett," and they have convened a call about it.

Lord Grabiner: Yes.

Jesse Norman: So the trader obviously has something they are worried about and they are talking about what that might be. The trader says, "The 4 o'clock fixings in sterling in particular are getting bigger and bigger and bigger and bigger," and he worries about these

things. Then Mallett just says, “Yeah,” and then he goes into a bit more detail about the nature of the money that is washing around and then he says, “but I’m sure a lot of them are being made up and washed around but it just, it’s gone from...just to create brokerage”—to which Mallett replies, “Ok—so to draw you in to”—“but also...some of these banks want to build a book.” Okay, so building a book is a flag for potentially nervous-making behaviour, is it not, Lord Grabiner?

Lord Grabiner: This, of course, is about brokers. I was not concerned with brokers. If there is an issue here about brokers, that would have been something that the FCA would have investigated and, from memory, there is nothing in the final terms of the FCA’s decision that deals with this issue, but this was all drawn to the FCA’s attention.

Q74 Jesse Norman: Absolutely. The broker side of it is on the FCA and we are focusing on the bank side of this.

Lord Grabiner: Yes.

Q75 Jesse Norman: But the trader is worried about building a book that gets bigger and bigger. Mallett asks, “And it’s specifically in sterling?” He says, “Yep, absolutely, cable”—which is the sterling/dollar exchange rate as you know. “It spun around that much,” and Mr Mallett keeps overspeaking. He keeps essentially interrupting, talking over him, and that is in the transcript. Mallett says, “What troubles me”—it is an interesting word “troubles”—“is your, um, your accusation that there could actually be some, ummm...” The trader says, “It’s not an, well, accusation is probably a strong word,” but he is worried. He is raising this in a specific call with Mr Mallett about it. “It’s being, it’s being exaggerated shall we put—” the trader says and then Mallett says, “Well that’s market manipulation isn’t it?” The trader says, “Yep absolutely”—that is market manipulation.

So the trader has convened a call on the phone speaking to Mallett and he is raising a worry about market manipulation. Mallett identifies it and the trader says, “Yep absolutely.” Okay, so then Mallett tries to go into the name of the broker and then slightly heads him off: “You don’t have to answer this, but do you suspect, of the two brokers you name, one is more...”, and of course the trader takes the cue and says, “No, no, no, no definitely not, no no.” That has prevented the trader from putting in the name for the public record or the record of the recording who the brokers—

Lord Grabiner: That is not how I interpreted that.

Chair: Let us wait until—

Jesse Norman: He says, “You don’t have to answer this, but do you suspect, of the two brokers you name, one is more...” and he goes, “No, no, no, no definitely not, no no.”

Lord Grabiner: He backs off.

Jesse Norman: That’s right; he backs off and so the phrase “You don’t have to answer this” feels like a bit of an encouragement, or it could be interpreted as such. Then they are going on and then the trader says, “The brokers are facilitating it for the banks,” to which Mallett says, “Yeah, ok”. The trader says, “As opposed to the brokers, as opposed to the

brokers...” and Mallett says, “It’s the banks, if you like, try to manipulate the market through the brokers?” Then the trader says, “It’s not that, they’re just trying to build a book.” So the trader is quite specific about what falls into the behaviour he is worried about and what does not fall into it. He is just talking about book building, the potential for market manipulation.

Then Mallett says, “Yeah, your point is that some people are doing that without actually...” and the trader says, “Without an interest”—that is, they are doing it speculatively—worried, bearing on the question of market manipulation. Mallett then says, “Yeah ok, I understand. Right, well, er...” and the trader says, “It’s just that it could get a bit, at some stage it could get a bit...” and then Mallett overspeaks again—cuts across him—so you don’t hear what it could “get a bit”. What he must mean is “worrying”—“illegal” is the kind of word that comes to mind there. Mallett says, “[overspeaking] Can you keep us in touch?” The trader says, “Yeah yeah, I will do yeah.” That is the transcript we have in front of us at the moment.

The first question is: do you think the trader’s concerns warranted a further investigation by Mr Mallett?

Lord Grabiner: Well, the trader starts with what looks to Mr Mallett—is my interpretation of this conversation—as being a sort of preliminary discussion with a view to criticising or expressing suspicion of the behaviour of two brokers unnamed.

Jesse Norman: Yes.

Lord Grabiner: Mr Mallett, if I may say so, very properly, says to him, “Well that’s market manipulation, isn’t it?” and the trader says, “Yes.” Then Mr Mallett says, “You don’t have to answer this, but do you suspect, of the two brokers you name, one is...” and then the trader runs away from it.

Q76 Jesse Norman: He says, “One is more...”

Lord Grabiner: “One is more...”; yes, but—

Jesse Norman: Yes. In other words, more guilty, more responsible, more—

Lord Grabiner: This being an occasion when the trader overspeaks Mallett, you will see, and the trader immediately interrupts. He says, “No, no, no, no definitely not, no no.” So Mr Mallett is asking him, and then he says basically, “I’m not prepared to go down the road that you’re suggesting may be an interpretation of what I’m trying to tell you.”

Q77 Jesse Norman: Can I make a point of fact just for a second? He does not overspeak. Where there is overspeaking it is it is marked in the transcript. He tails off. He says, “You don’t have to answer this, but do you suspect, of the two brokers you name, one is more...” He then pauses and at that point the trader says, “No, I am not going to name one as being...” They are each as bad as the other is the inference from that—“I’m not going to name one as being worse than the other.”

Lord Grabiner: I’m not sure about that.

Q78 Jesse Norman: He has named the two of them. He has convened the meeting. He has raised the issue. The guy says, “Which is more...”—pause. “No, no, no.” That suggests they are equal in the respect that he is worried about them.

Lord Grabiner: But it is very curious. If the trader had finished his communication, what he was saying were the following words: “It’s being, it’s being exaggerated shall we put—” and then Mallett speaks. I have not listened to the transcript, but it looks to me as if Mallett intervenes and makes the observation about market manipulation, but whether he is overspeaking or not, with respect, is in a sense neither here nor there because when he—

Q79 Jesse Norman: Going through it now, don’t you think it might have been a good idea to listen to the transcript, Lord Grabiner?

Lord Grabiner: Let me just finish the question, first of all. When he suggests to the trader that that may be what he is coming to and then the trader backs off, as I put it a moment ago—

Jesse Norman: The trader first said, “Yes.” He has agreed that it is market manipulation.

Lord Grabiner: Indeed, but then he backs off. The critical bit of the conversation, in my view, is that at the end of the conversation, Mallett says to him, “Can you keep us in touch?” and he says, “Yeah, I will do yeah”. Mallett says, “Over the next few weeks if you hear more of this...and [James O’Connor] is listening in, so either me or [James O’Connor] yeah,” and the trader says, “Yeah, I’ll just give you a heads up.” Now, I asked questions about this and he never came back.

Whether he should have gone ahead and made some further inquiries is a separate matter, but he never came back. It is not particularly clear, but the impression I got from the exchange was that it was not very clear what the trader was trying to communicate, but when it was put to him that he was making a very serious allegation, he was not prepared to go through with it and then, when invited to come back on a later occasion, he failed to do so. Whether there is a separate criticism to be made there of Mr Mallett I am not sure. It may be that he formed the view that there was nothing in the conversation, in any event.

Q80 Jesse Norman: Lord Grabiner, I want to bring in the Chairman’s question in a second but, if I may say, I think you have slightly mis-stated the case, because the trader is not in any doubt that there is market manipulation. The trader says, “Yep absolutely.” What the trader backs off from—as you put it—was not the claim about market manipulation; it was which of the two brokers—“One is more...” The trader is not prepared to say that one is more—whatever the thing may be: guilty, exposed or whatever it might be—but he is perfectly clear that there is market manipulation. There is no doubt about that from the transcript. In fact Mallett says it again: “It’s the banks, if you like, try to manipulate the market through the brokers?” Then the trader says, “It’s not that, they’re just trying to build a book.” He thinks there is market manipulation that comes not by manipulating through the brokers, but by some other form of market manipulation. There is a clear pattern there. Chairman, did you want to bring in a question about—

Lord Grabiner: Wait a second. If I can—

Jesse Norman: Do I have that right?

Lord Grabiner: I would like to make this point if I may, and that is that the word “manipulation” is ambiguous and it is very important to understand this. You can have perfectly lawful manipulation. It is a very odd word, because it has inappropriate connotations, but you might manipulate something perfectly lawfully. For example, you want to achieve a certain result in the marketplace and you do it without more—alternatively, you could achieve—

Q81 **Jesse Norman:** Sorry, without more what?

Lord Grabiner: Suppose, for example, I wanted to sell a lot of shares in the market, but I don’t want to tell the market that I am selling 5% of the stock of some company. What I might do—and this could be described as manipulation—is to dribble out the shares over a period of time, so the market never discovers what I am up to and the result is that the market price is never moved. Now, you could say that the trader was there manipulating the market. That is one kind of description of the word “manipulation”.

Chair: I do not think I have ever heard of that being described as manipulation. Lord Grabiner, I do not know whether anybody listening to this would consider it—

Jesse Norman: Lord Grabiner, can I point out a potentially relevant fact, just for a second, to your challenge?

Lord Grabiner: Can I just finish my point?

Jesse Norman: Yes, of course.

Lord Grabiner: My point is that you could use the word “manipulation” in a perfectly lawful context and you can also use the word in an illicit context. For example, if the manipulation was the result of collusive behaviour, then that would be a different usage of the word “manipulation”. The mere presence of the word “manipulation” does not tell you necessarily which of the categories we are talking about. That is the only point I want to make.

Q82 **Jesse Norman:** I do not know if it is relevant, but there are four members of this Committee who have worked in the financial markets, none of whom would recognise the description you have given of the dribbling out of shares as market manipulation, but there may be such a definition of manipulation. You are the legal expert, not me—I do not demur from that—but it is perfectly clear that that cannot be the case here, because you do not call the chief foreign exchange dealer at the bank to complain about legal market manipulation; you call him to complain about market manipulation in the sense that is normally understood: that it is dodgy behaviour. That is what this guy is worried about, isn’t it? It is perfectly obvious and I am surprised you do not agree with me, Lord Grabiner. Do you want to review that again and just come to your final view?

Lord Grabiner: The reason I do not agree with you is because it is blatantly obvious that the trader was not prepared to make the allegation that you are saying he must have had in his mind. I do not accept that your interpretation is what the trader did have in his mind.

Q83 Jesse Norman: The difficulty is there is no interpretation here. The phrase is, “Well that’s market manipulation isn’t it?” “Yep absolutely.” That is completely unequivocal: “Well that’s market manipulation isn’t it?” “Yep absolutely.” He has made it clear. I asked you the question: did the trader’s concern warrant further investigation by Mr Mallett? You then said somehow that it was the fact that the trader did not then follow up with all the hurley-burley of the foreign exchange markets that discharged any obligation on Mr Mallett. That seems to me to be a clear non-sequitur. Regardless of whether the man followed up, he has made an accusation of market manipulation. It is in the record; it is discussed; and the question is: why should he not have been under an obligation to follow that up? He is the senior man responsible and I am asking you why that was not the case.

Lord Grabiner: Mr Mallett’s evidence to me was that this was a garbled conversation, that he did not understand that that was what was being said to him, that he tried to get to the bottom of the conversation, and that was as far as he got. I agree with him because I think that is a very fair interpretation of this exchange.

Q84 Jesse Norman: That is very helpful. We disagree on the interpretation and we can leave it to those reading this transcript of the conversation and listening to the tape to decide what they think. Let us have a follow-up question. Do you think there is any onus on Mr Mallett to have contacted the trader to follow up—“Harry, I notice you had an issue about market manipulation. You were going to get back to me. Has there been any further information you have come across?”? Do you think there is any obligation on him about that?

Lord Grabiner: Well, he didn’t think so and I accepted his evidence.

Q85 Jesse Norman: You do not think so?

Lord Grabiner: I told you, I accepted his evidence. I think that your interpretation—

Jesse Norman: Sorry, we are talking about judgments.

Lord Grabiner: Let me finish, please. You just keep interrupting me. It is not going to get us very far. I want to make my point. You persist in wrongly interpreting the word “manipulation”, in my opinion. I heard Mr Mallett’s evidence on this and I questioned him very closely about this conversation. His evidence to me was that it was a garbled conversation. He did not believe he was being told about wrongful or illegal behaviour, and I believed and accepted his evidence. You may have reached some different conclusion, but you were not there. I was.

Q86 Jesse Norman: You accepted that evidence, despite the clear sentence here that it was market manipulation? That is in the record.

Lord Grabiner: You persist in wrongfully interpreting the word “manipulation”. I do not accept the spin that you are putting upon that word. You are wrong.

Q87 Jesse Norman: Lord Grabiner, if I may say so, you are slightly over-extending yourself. I am raising a question about interpretation of some language that has a perfectly

plain market meaning. The view that I have reached is not idiosyncratic to me. It is shared by other members of this Committee, all of whom have operated in financial markets—unlike you, if I may say so. It is in the context of a call that was made to reflect a concern by the trader. Therefore, it occurs in a context that specifically raises an issue of unhappy, unfortunate or possibly illegal behaviour. Those are all considerations that militate in favour of my interpretation of this, I am afraid. On the evidence we have in front of us, your interpretation of it—you have already agreed that you did not listen to the recording, so you are not at any further advantage to us, except that you accept the evidence that has been given by Mr Mallett and we have not had the chance to listen to Mr Mallett. We are just forming a judgment based on the evidence we have. I asked you the question: should Mr Mallett have contacted the trader to follow up? You have not yet responded to that question.

Lord Grabiner: I have actually responded to it a couple of times. In my judgment, having questioned Mr Mallett about this in considerable detail, which you have not—and trying to get the context from him of the conversation and his impression of what it was that the other party to the conversation was trying to tell him—he formed the view that it was a garbled conversation, that the spin that you are seeking to put upon what the trader was saying to him is deeply offensive and probably illegal and that he should have gone back and questioned him further. My own view—

Jesse Norman: Lord Grabiner, you are over-extending yourself. I have made no—

Lord Grabiner: Allow me to finish my answer. My own view is that his interpretation of that conversation was an honest one when I asked him about this and, if there be any doubt about this, he was entitled to the benefit of the doubt.

Q88 **Jesse Norman:** You do not think he should have contacted the trader to follow up?

Lord Grabiner: I believed his evidence.

Q89 **Jesse Norman:** You are incapable of reaching the clear statement “yes” or “no”. You accept his evidence. That means you concurred with his view that he should not have had to contact the trader to follow up.

Lord Grabiner: I accepted his evidence that he did not believe that he was being told something that he should do something about.

Q90 **Jesse Norman:** Let the record be clear that you are not prepared to give us a “yes” or “no” answer to the question.

Lord Grabiner: That is your point. That is not my point.

Jesse Norman: Okay.

Lord Grabiner: You are entitled to your opinion.

Jesse Norman: Thank you for that.

Lord Grabiner: I think I am entitled to mine as well.

Q91 Jesse Norman: Most certainly, and I would certainly not accuse you of spin, Lord Grabiner. You said, “The trader’s explanation...is unclear,” and that you do not think they understood it. Did you ask Mr Mallett what he did understand from the trader’s explanation?

Lord Grabiner: I’m sure that I did and I do not have the transcript available to me but, in response to that question, the substance of his answer to me was that it was a garbled conversation and that when he did put the key question to the person with whom he was speaking, he got a back-off response.

Q92 Jesse Norman: Would you be able to send us a note of the transcript you do have, so that we can have his response to you—so that we know what he actually said to you?

Lord Grabiner: I am sure I could.

Q93 Jesse Norman: That would be very kind of you. Mr Mallett, in the conversation, seems to have inferred there was some kind of wrongdoing from the conversation, doesn’t he? He says, “You don’t have to answer this,” and “market manipulation”—he is obviously worried that something is being done here. He is worried that there is manipulation going on—“You don’t have to answer this.” That is not something, by the way, that you say in the context of someone who is doing something according to your definition of legal manipulation, Lord Grabiner. It is only in illegal manipulation that you would worry about not having to answer something. Isn’t that right?

Lord Grabiner: Can you repeat the question?

Jesse Norman: He says, “That’s”—

Chair: Okay, but it was very clear.

Jesse Norman: Mallett says, “Well that’s market manipulation isn’t it?” The trader says, “Yep absolutely.” Mallett says, “You don’t have to answer this, but do you suspect”—that is an interesting word—“of the two brokers you name, one is more...” He says, “No, no, no, no definitely not, no no.” If it is legal manipulation, why is Mallett cautioning him about not having to answer things?

Lord Grabiner: He’s not cautioning him; what he’s saying to him is, “If this is what you are telling me, tell me,” to which the answer is, “No, it’s not,” or, “No, I’m not saying that.” He repeats the word “no” about six times.

Q94 Jesse Norman: He says, “You don’t have to answer this, but do you suspect, of the two brokers you name, one is more...”, so he is trying to identify which one might be more at risk in some way. But it is clear, is it not, Lord Grabiner, he thinks that this is potentially wrongdoing in some kind of form? He is worried about it. He wants him to get back in touch with him. If you think something is a legal manipulation, you do not ask

someone to get back to you. You do not worry about it. He thinks it is illegal or possibly a form of wrongdoing, doesn't he?

Lord Grabiner: Mr Mallett thought this was a garbled conversation and I accepted his evidence.

Q95 Jesse Norman: I am not sure you are doing yourself any credit, Lord Grabiner, by not being more direct about the answers to this.

Lord Grabiner: I do not think I could be more direct than I have been.

Q96 Jesse Norman: So you do not think that Mr Mallett inferred wrongdoing.

Lord Grabiner: Repetition of the question is not going to get a different answer.

Q97 Jesse Norman: No, but I just want to be clear. Let us ask another question. Mr Mallett does not say at any point in the discussion that he does not understand the explanation that has been given. He does not say, "I'm sorry, Jim. I don't understand what you are saying," does he?

Lord Grabiner: I have gone to the trouble of inserting the whole of this exchange in this report for your edification, among others. So you have seen it for yourself. That is the extent of the conversation.

Q98 Jesse Norman: I think it is extremely admirable for you to have put this in, because it is the very information that we need to be able to ask questions in a perfectly proper, public way of you, Lord Grabiner. I applaud you for doing that, but I think it is true and I have not seen anywhere in this—and I do not think colleagues have seen anywhere in this—where Mr Mallett tells the trader that he does not understand the explanation being given. Now, if you have seen somewhere where he does say, "I don't understand the information that I am being given or the explanation," could you point me to it?

Lord Grabiner: I will provide you with the relevant extracts from the transcript of evidence, when I questioned Mr Mallett about this very conversation, and you can make up your own mind about it.

Q99 Jesse Norman: Yes, but that does not bear on this conversation between the trader and Mallett, does it?

Lord Grabiner: We know the extent of that, conversation because I have set it all out in the report.

Jesse Norman: I want you to confirm to me that there is nothing in here where it seems to me—maybe I have misunderstood it.

Lord Grabiner: No, you can read it for yourself. Anybody can; it's a public document.

Q100 **Jesse Norman:** You are prepared to agree with me that there is no point at which Mr Mallett says that he does not understand the explanation?

Lord Grabiner: You read it for yourself. I'm not going to start interpreting his observations in this document. You make up your own mind as to what's in there. What he said there is there; my conclusions are there, based upon the evidence that he gave me. And, as I say, I will provide you with the relevant transcript extracts and then you can make up your own judicial mind on the subject.

Q101 **Jesse Norman:** Lord Grabiner, I don't have a judicial mind; I leave that—

Lord Grabiner: I know that; that's the reason I made the point.

Jesse Norman: Gosh.

Q102 **Chair:** Sorry, can you just explain what you mean by that, Lord Grabiner?

Lord Grabiner: What I mean is that there is simply no point in your trying to have a debate with me about my conclusions, in relation to a particular conversation, without having seen Mr Mallett and without having participated in the process that I was involved in. You simply pick out a little nugget and tell me what you think it means, and all I am respectfully suggesting to you is that you may actually be wrong and I may actually be right.

Q103 **Jesse Norman:** Lord Grabiner, I am not remotely suggesting that I may be right. I am asking you about evidence you have placed in the public record in a parliamentary process of which you are party, holding you—under a parliamentary process, in a way that I think is perfectly properly understood and widely shared—accountable. You are having great difficulty giving straight answers to perfectly straight questions.

Lord Grabiner: That is a very offensive observation and I reject it. I am having no difficulty at all. I have not been evasive in my answers and it is very offensive for you to suggest that.

Q104 **Jesse Norman:** I absolutely do not mean any offence at all, but when I asked you the question, “Does Mr Mallett anywhere tell the trader that he has not understood the explanation?”, I have not understood that you were able to say either yes or no to that question.

Lord Grabiner: Why don't you read it for yourself and make your own judgment? What I think he was saying is neither here nor there.

Q105 **Jesse Norman:** Okay, that's fine. Let me just conclude by saying this. Just imagine that the impossible or the unlikely were the case and that in fact there was a worry about illegal manipulation here, and that was the reason why the trader made the call to Mr Mallett, and that it was illegal manipulation the trader was referring to when he talked about,

“Well that’s market manipulation isn’t it?” “Yep absolutely”. Let us just say, however, counterfactually, that that is the explanation. It would then be the case, would it not, that if—as I think you effectively conceded—Mr Mallett does not anywhere say that he does not understand the explanation being given, it would seem that that would cast doubt on the information he gave you, that he subsequently thinks what the trader says was garbled. It does not come across as garbled, but that is Mr Mallett’s view. If all that were the case, do you think that Mr Mallett ought to be the subject of criticism for failing to investigate further and failing to raise this allegation of market manipulation with officials inside the bank?

Lord Grabiner: If Mr Mallett formed the judgment that he was being told about some illegal business being done in the marketplace, then in my view he stands to be criticised, yes; but I do not believe he did interpret the conversation in that way, which is why I have reached the conclusion I reached.

Jesse Norman: I am very grateful. Thank you very much indeed, Lord Grabiner.

Q106 Chair: When LIBOR was being investigated, the most senior regulators took it upon themselves to listen to the transcripts. I asked you earlier, but I did not get an answer: do you regret not having listened to this particular transcript?

Lord Grabiner: I have no regret whatsoever about it. In a perfect world, no doubt I could have listened to years and years of communications on telephone calls, but at the end of the day—

Chair: I was only referring to this particular transcript, not years and years.

Lord Grabiner: I know, but you picked out one of many hundreds of communications.

Jesse Norman: They are the ones in the report.

Chair: The ones that you provided in your own report are the ones we are referring to, but we have had your answer on that. I do not think we are going to get a lot further on the exchanges about this particular bit of the transcript.

Q107 Alok Sharma: Lord Grabiner, earlier when responding to the Chairman, you talked about the fact that the taxpayer got a very attractive deal for your services. Apart from you, was there anybody else from your chambers who was involved in this investigation?

Lord Grabiner: Yes, I think it is referred to on the first page of my report. Adam Rushworth, who is a junior in my chambers, assisted me in the process and, of course, Travers Smith, the solicitors.

Q108 Alok Sharma: Yes, of course. How many hours did you spend collectively on this investigation, just roughly?

Lord Grabiner: I have not the faintest idea. It was substantial, though.

Q109 Alok Sharma: If you do not have the exact figure in front of you, could you tell me, in terms of proportion, how much of your time was spent reviewing the information

that Travers Smith had extracted? How much of it was spent interviewing the various people you interviewed and how much time was spent talking to the experts at the FCA, and I think you have made reference to one other individual?

Lord Grabiner: I have not the faintest idea.

Q110 Alok Sharma: You talked about the fact that, in terms of these telephone conversations, you could have listened to hundreds. As I understand it, Travers Smith oversaw the extraction of 1.8 million electronic documents and 87,000 telephone calls from the bank. May I just ask you what was the process for you reviewing in some way all of this information that was extracted?

Lord Grabiner: Well, I relied upon them to get out the material insofar as they took the view that it was relevant to the matters I was looking at. I was meeting with and speaking with them on a regular basis, so they would produce the material and provide it to me. For example, in relation to the telephone conversation that we have been discussing, they will have produced to me the transcript.

Q111 Alok Sharma: They picked the bits of information that they thought were relevant?

Lord Grabiner: Based upon the search terms that we had agreed with the FCA.

Q112 Alok Sharma: It could be the search terms were wrong or there may be other telephone conversations—

Lord Grabiner: Yes, but it is very unlikely.

Alok Sharma—that would be relevant in the same way that Mr Norman has raised?

Lord Grabiner: It is very unlikely because, whenever you do this kind of exercise, you have to do it by search terms. Otherwise you have to look at millions of communications and it is just not realistic. In modern day litigation, where a huge amount of the material is in e-mail form, for example, or telephone recordings, you have to do it through a search-term basis. Then you either agree that with the judge or with the other side—or in this case with the FCA—and you do your best. I am not suggesting for a moment that there isn't other material out there that we have never seen, but I think we did our best to try to get the relevant material.

Q113 Alok Sharma: Can I just ask one final question? Going back to this conversation that you have had in exchange with Mr Norman, clearly you have a different interpretation to, I would have thought, everyone on this Committee. From the perspective of reasonableness, do you think, for somebody reading this conversation and knowing that this telephone call took place, it would be reasonable for them to assume that the reason the trader made this call is because he was concerned about some wrongdoing or potential wrongdoing? Otherwise why would the call have been made in the first place?

Lord Grabiner: I just do not know. All I do know is that, having been on that end of the conversation, Mr Mallett formed the view that he formed and I believed him, because if you do not give him the benefit of that doubt, the alternative is that this was a very serious dereliction of duty. If I was giving him the benefit of doubt, then I gave him the benefit of the doubt, acting fairly towards him.

Chair: Thank you for coming to give evidence to us this afternoon. I think we have ended up in a somewhat different place to the one most of us, and certainly I, expected to find ourselves in. We will probably need some more information—and we have already alluded to some of that in these exchanges—and when we have that in front of us, we may ask you to come and see us again. Thank you very much indeed, Lord Grabiner.