

Treasury Committee

Oral evidence: [Work of the Financial Conduct Authority](#), HC 950

Wednesday 4 November 2020

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Members present: Mel Stride (Chair); Rushanara Ali; Harriett Baldwin; Anthony Browne; Felicity Buchan; Ms Angela Eagle; Mike Hill; Julie Marson; Siobhain McDonagh; Alison Thewliss.

Questions 1 - 84

Witnesses

I: Nikhil Rathi, Chief Executive, Financial Conduct Authority; and Charles Randell, Chair, Financial Conduct Authority.



Examination of Witnesses

Witnesses: Nikhil Rathi and Charles Randell.

Q1 **Chair:** Good afternoon and welcome to the Treasury Select Committee evidence session on the work of the FCA. I am very pleased to be joined this afternoon by both Nikhil Rathi and Charles Randell. Could I ask you to briefly introduce yourselves to the Committee?

Nikhil Rathi: Good afternoon. My name is Nikhil Rathi. I am chief executive of the Financial Conduct Authority, and I joined the FCA on 1 October this year.

Charles Randell: Good afternoon. I am Charles Randell. I am the chairman of the FCA and of the Payment Systems Regulator.

Q2 **Chair:** We will have a Division in the House of Commons at, we think, precisely 4.01 pm. I will be suspending the Committee at that point, probably for about 15 minutes, perhaps a little longer, just so you know and those viewing understand what is going on at that point. To both our panellists, please stay logged on to the session and we will come back to you as soon as the Division is over. The questions will generally be directed to either or both of you. If it is just to one of you and the other panellist feels an urge to say something, do not hesitate to raise your hand and I or the questioner will bring you in at that point.

Perhaps I could start with a question for you, Nikhil. We have had a huge amount of correspondence, from IFAs in particular, but also from other colleagues in the House of Commons, other Members of Parliament, basically saying that the levy the FCA is having to apply, particularly in respect of the FSCS, is too high. There is a concern that this levy will rise through time due to the fact that the economic pressures may put a number of advisers out of business. A lot of them feel that the good operators, those that do it by the book, are picking up the tab for those that are doing the wrong thing when it comes to financial advice. Is it not the case that these fees are just too high?

Nikhil Rathi: We have also received much of that correspondence and have had a dialogue with a number of the trade associations and the financial adviser groups. We have sympathy with the fact that the costs have been rising. The minimum FCA fee is £1,151 per year. The portion that has been rising, as you say, is the FSCS levy, as a number of historical issues have been working through, often failures resulting from issues that arose multiple years ago, which have been resolved through the compensation scheme. That puts a burden on the financial adviser community.

For the majority of advisers, it is a small proportion of their overall regulated income, but we can understand the strain that puts on some specific firms. The focus we have is on preventing these situations arising and working hard, particularly as we work on supervision of our flexible firm portfolio, to make sure that we catch these issues earlier. There are



other solutions that are worthy of exploration, including insurance for financial advice firms.

Q3 Chair: I know you have your consultation on the consumer investment market at the moment. You have raised the issue of insurance, and I think you are referring to professional indemnity insurance. There is also a suggestion of additional capital requirements for some of these firms and some kind of mechanism by which riskier firms might pay more. Can you flesh out what the thinking is around those options and any others that might be leading options at the moment?

Nikhil Rathi: There is an issue when firms fail that the cost of that failure, where it is covered by the FSCS, falls on the FSCS and the levy payers of the FSCS. We would like to explore whether, as part of our regulatory approach, we should require a higher level of professional indemnity insurance of those operating in this market. That also brings costs, but one would hope that, through that approach, the riskier firms end up paying higher premiums and then, when there is a failure, there is insurance that avoids the bill falling on the FSCS.

Q4 Chair: Do you feel that the insurance industry could provide a competitive product, or a competitive response, if you were to require more in that area? Is it your opinion that it would not be a particularly efficient market and might be rather expensive?

Nikhil Rathi: That is a dialogue we are entering into and we are going to have to have. There are concerns that it may be a market that is not functioning effectively and that, in the moment we are in right now, where we would expect, because of the economic conjuncture we are facing, an increase in firm failure, there will be a reticence in the near term for insurance to be the solution. We would like to keep the option open as to whether this can be a medium-term part of—

Q5 Chair: What sort of timeframe? We are going to come to timing. I am sorry, I know I have slightly interrupted your flow of the different measures you are looking at. On this specific point, when you say medium term, how long is medium term?

Nikhil Rathi: I would think over the next two to three years, realistically. Aside from insurance, you mentioned capital requirements. We have a proportionate regime in the United Kingdom. Because we do not want to discourage entry into the market, the level of individual capital requirements required of small firms is not particularly elevated.

As we are thinking about our regulatory framework, particularly as we end the transition period after the exit from the European Union, we will need to think about whether there should be a greater risk-based element even for some of the smaller firms when we are looking at capital. That also is not cost-free, because it is quite difficult at the point of entry into the authorisation gateway to distinguish completely between what is a bad firm and a good firm. Therefore, the capital requirements



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may end up being borne by some of the good firms as well. We want to consult on that fairly widely before we go down that route.

Q6 **Chair:** Once again, in terms of timeframe, if that is an avenue you decide to pursue, is that medium term as well? What sort of timeframe might there be on that as an option?

Nikhil Rathi: I realistically think that would be another two to three years as well.

Q7 **Chair:** Can we keep going down your list of other areas, unless we have exhausted it?

Nikhil Rathi: We are working through a number of legacy issues, be they SIPP operators that operated non-standard investments eight or nine years ago that are now failing and that we are dealing with. I would hope that, as we work through those, the time is coming where that legacy set of issues will diminish.

Q8 **Chair:** If I was an IFA sitting listening to this, I would probably be saying it is great that there is a focus on this as a consultation; there is an intent to address the issue; and the issue is recognised. However, I might be saying, "Who knows? It might be even longer than two to three years. In the meantime, particularly given the current economic pressures, I am really very worried about it and I am not hearing anything that is going to be solving this problem within the next 12 to 18 months," for example. What would your response to that be?

Nikhil Rathi: It would not be realistic for me to come here and give a commitment that the levies will diminish in the next 12 to 18 months.

Q9 **Chair:** I was thinking not so much about guaranteeing they diminish, but more about coming forward with concrete proposals or measures that will help around these pressures in that kind of timeframe.

Nikhil Rathi: There are many measures in our consumer investments paper where we are taking action earlier to seek out the bad actors and prevent them from failing and causing harm, including the further action we are proposing on promotions and the work we are doing in the online space to reduce fraud and scams. That earlier intervention and proactive work should hopefully reduce the number of failures and therefore, ultimately, the burden that falls on the FSCS. That is one element we are working on intensively now.

Q10 **Chair:** Charles, you have listened to our little exchange on this. Do you have any observations to add to what Nikhil has said?

Charles Randell: This is a really difficult problem, which I have been discussing intensively with some representatives of the financial advisers, including PIMFA. I am well aware of the strength of feeling that exists on this front. It is right that it does, because the system we have at the moment does not result in the costs of poor conduct being borne by the people who commit that poor conduct. Through the Financial Services



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Compensation Scheme, the costs of bad actors are mutualised across the good people remaining in the industry. That is the problem we have at the moment. We have this big backlog of misconduct that is causing costs and coming through in the FSCS levy.

By comparison to the FSCS levy, our own levy, for example, is very small and has been held flat during this last year. For small firms, 71% of levy payers have seen no increase in our fees, but the FSCS levy is undoubtedly a big problem. Nikhil is right not to give you false comfort about when and whether it will come down, because the FSCS levy is driven by two things. First, it is driven by historical problems that, as Nikhil says, are working their way through, with people like SIPP operators, and we have seen some problems with defined-benefit pension transfer advice, for example.

The other driver of calls on the FSCS is not just the volume of bad activity; it is the macroeconomic climate. The rate of firm failure is driven by what is happening in the broader economy. I am afraid it is an area where we cannot give you specific comfort on when those levies will start to come down. I am absolutely determined that we end up with a more preventive and more risk-reflective structure overall. That means improving the actions we take at the authorisations gateway and in the supervision of firms.

It also means distinguishing more clearly between those firms that conduct risky activities and those that conduct what I might describe as plain vanilla activities, and trying to work with the insurance market and the FSCS to ensure that levies and premiums are focused to risk to a greater extent. That will give people much more pause for thought before they conduct riskier activities, which will be more costly in both levy and premium terms. That is the long-term strategy, but it is a long-term strategy that will take several years and I am afraid there is no way I can sugar that pill.

Chair: I understand that. Just for clarity, my inquiries here were not so much about when fees might come down, because that may indeed be a real challenge, for the reasons you have given. You have the externalities of the economic circumstance at the moment. You have the inherited problems of the past. It is really when the new measures you are consulting on might be able to be brought forward. The concern of this Committee will be that that work progresses as swiftly as possible and these measures, to the extent they can be helpful, are brought in as quickly as possible.

I have run out of time, but perhaps I could finish by asking you to write to the Committee on this point about the kind of actions you see in what we might call the shorter-term space, up to 18 months or so, and those we have defined as more medium term. For reasons of time, I will ask you to write in on one specific point, which is phoenixism—advisers who are doing the wrong thing, discovering they have done the wrong thing, moving on, setting up again or moving on to another firm and carrying on



the same kind of activity—and specifically how you are seeking to stamp that out. That would be very helpful indeed.

- Q11 **Siobhain McDonagh:** I want to look at the impact of the FCA’s work on mortgages, overdrafts and funeral costs. On 18 March, the Business Secretary reassured those seeking a three-month payment break that it would not impact their credit record. On 20 March, the FCA confirmed this. However, the FCA did not tell borrowers at this point that a mortgage payment holiday or deferral could still influence banks’ willingness to lend to them, even if their credit scores or ratings were unchanged. Why was it not until 22 May that the FCA added these warnings to its mortgage advice page, and until 1 July that a similar warning was put on the FCA’s loans, credit card and overdrafts webpage?

Charles Randell: There are two things going on here. First, the credit reference agencies have information reported to them by firms, which goes on to the consumer’s credit file. As you know, you can apply to see what your credit rating is and so forth. When the statements were made in March about the marking of credit files, those were the measures that the FCA was talking about.

Separately, when a lender is making a credit decision about a customer, our requirements are that it looks at the totality of the customer’s position so that it can ensure that borrowing by the customer remains affordable and that any tailored support and advice the customer needs is offered to the customer in the light of their personal circumstances. Those are the two different things that you are distinguishing between there.

Nikhil Rathi: In the measures we announced on Saturday and in the last few days, in light of the national restrictions that have come in, we have once again extended the payment deferrals both for mortgages and for consumer credit products. We are consulting on those hopefully to produce finalised guidance next week.

We have been clear that the credit file masking is there for three months, but we have also been clear, in what we have published in the last week, that that will not mean that the additional indebtedness taken on will not be taken into account by lenders when they are making affordability decisions for future lending. As Charles has said, it is important that, when a lender makes a future lending decision, they have an understanding of the overall indebtedness of a consumer.

- Q12 **Siobhain McDonagh:** If I could interrupt there, that is not really answering my question. To the layperson with a mortgage, they were told in March that, if they took a payment holiday, it would not affect them in the future. It took the FCA three months to put on the website that, indeed, it would be taken into account, which leads me to my second question.

In a letter to the Committee this morning, Nikhil, you stated, “New mortgage or consumer credit payment deferrals: while those borrowers



taking payment deferrals will not have a worsened status reported on their credit file, this does not necessarily mean their ability to access credit will be unaffected.” Why is it that the Treasury and the FCA are ganging up to side with the banks and not the consumer?

Nikhil Rathi: We would see it in a different way. This is going to be in the consumer’s best interest, because it would not be appropriate for consumers to take a deferral, for their debt interest to be rolled up and their indebtedness to increase, but for that information not to be available to the lender when they seek more lending and for the risk to crystallise that they borrow more that they cannot afford. When a lender is making a lending decision, they should understand the overall income, expenditure and balance sheet position of the customer so they can make sure that any future lending they give is affordable for the consumer. If it is not affordable, sometimes, there are other better solutions available for consumers than more lending.

Q13 **Siobhain McDonagh:** Would it not be fair to be straight and upfront right at the very beginning?

Nikhil Rathi: I was not there in March when the first announcements were made. We are now saying very clearly, in the statements we made on Saturday and this week, that there will be no worsening status on the credit file, but it is reasonable for lenders to understand the position when they are assessing future lending decisions.

Q14 **Siobhain McDonagh:** As the economic situation deteriorates, the number of people needing assistance will increase. At the start of the pandemic, banks were instructed to give everyone struggling up to the first £500 of their overdrafts interest free. This was extended until the end of October. Back in April, almost all banks’ overdraft rates were set to be 40% APR. When the pandemic started, the FCA put a temporary halt on these cost changes and said, for three months, no one would pay more under the new 40% cost system than before. What has changed? Why has this support fallen away?

Nikhil Rathi: The generalised intervention in March, when there was an emergency situation, was quite an exceptional use of the FCA’s powers. It is quite unusual for a regulator to instruct regulated firms to provide a service for free, including taking credit risk, because there is a risk, obviously, that the lender loses if a borrower does not repay. That was updated in July to make the overdraft available on request. The situation in March was such that Government schemes such as furlough, universal credit and so on had not been fully implemented. Those have now been rolled out and are implemented, operational and available to consumers who can draw on that support.

We also, linking to the earlier conversation, want to make sure that, where consumers require lending support, a proper conversation takes place with their lender to understand their full circumstances and what is available to them. An overdraft is not necessarily going to be the right



solution for an individual who needs semi-permanent or medium-term borrowing. It is a short-term facility.

With respect to fees and charges, the big thing that has changed with the new overdraft rules, which have been introduced having been consulted on over the last two years, is that the daily and monthly fees that were charged, and which can be very significant for consumers who are borrowing small amounts of money, have all gone. You would have examples of people in overdraft of £50 or £100 paying £1 or even up to £5 a day. Those have stopped. Those were very large interest rates when they were compounded. We have now said that those have gone and banks are operating under the new framework, which we are watching closely.

- Q15 Siobhain McDonagh:** I have a very quick question about funeral costs. As the number of coronavirus deaths tragically rises and more and more families, sadly, have to arrange funerals, I would like to ask about the CMA's two-year market investigation report into the financial sector and why shares in Dignity, one of the biggest funeral operators and the only one to be listed on the stock market, rose by 26.7% two days before the report was to be published. On Thursday 13 August, the CMA announced the findings of its funeral market study and its surprise decision to shelve price control measures. Is the FCA planning to investigate a possible leak of the investigation report?

Nikhil Rathi: As you are aware, we do not comment on ongoing investigations. We are aware of the situation you have described. I know you have been in correspondence with the FCA's enforcement director on this matter. Where any information that may point to market abuse gets drawn to our attention, we will take a look at it and make a determination, but we do not comment on ongoing investigations.

With respect to the broader question about funeral plans, the Treasury is due to put forward legislation that brings prepaid funeral plans into the regulatory perimeter and, at the point that that legislation is adopted, we will then take forward our consultation on how these plans can be regulated in a more structured way than has been the case historically.

- Q16 Alison Thewliss:** I have some questions around SMEs and bounce back loans. To open things up, in the bounce back loan scheme, what responsibility do banks have for preventing fraud?

Nikhil Rathi: When the bounce back loan scheme was established, it was done at great speed because the overall economic conjuncture at that point was to get money into small businesses as soon as possible. It was prior to my time at the FCA, but I understand there were very extensive conversations with both the Bank of England and the Treasury about the economic imperative to enable banks to lend as quickly as possible to eligible businesses, because of the urgency of the situation.



Nevertheless, the FCA made clear that we would not waive rules around financial crime and fraud, and that banks must maintain the relevant systems and controls in place to ensure that basic levels of diligence were completed, particularly where they were taking on new customers. Our understanding is that approximately 14% of CBILS loans were denied because of concerns about diligence, as were 8% of BBLS loans upon first application.

Q17 Alison Thewliss: Are you keeping tabs on the amount of loans that are going out?

Nikhil Rathi: There are wider Government statistics on BBLS and CBILS. We are recipients of that data. You will be aware that, for the actual bounce back loans themselves, the lending was taken out of the regulated activities order so it was not a regulated activity. We are working with the banks and the Treasury on what the recoveries process will be at the point that a guarantee gets called and recoveries are needed. That topic will be progressed in the coming months.

Q18 Alison Thewliss: On that recovery point, it has been reported that banks are becoming concerned about the systems they will need when small firms start to default on their bounce back loans because some firms may have taken them out and the situation now is not the situation they had anticipated. What kind of work are you doing to support the banks and to make sure that small businesses are supported?

Nikhil Rathi: The Treasury, as the guarantor, is leading on this and is having a dialogue with the banks about how the guarantee will operate and the options that should be made available to struggling firms. Instinctively, we want to avoid small businesses getting into harm's way by early debt recovery, so there are options around payment holidays, extension of terms and so on.

Where we will be involved, and we are participating in the workshops, is making sure that whatever is agreed is consistent with our conduct rules on debt collection and recoveries. Banks are subject to what we call the senior managers regime, which includes principles about how they conduct debt recovery business. We will want to make sure that whatever is agreed in the overall framework is consistent with our rules.

Q19 Alison Thewliss: How closely will you be monitoring the senior managers regime?

Nikhil Rathi: It is one of the areas where we, in the last six months and continuing into the second lockdown, are prioritising our supervisory approaches to retail and SME lending.

Q20 Alison Thewliss: One of the suggestions around this has been a single centralised institution to deal with the defaults rather than relying on individual banks to do this. Is that something you would welcome?



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Nikhil Rathi: In principle, we would not have an objection to it. It would be important for us that the process of recoveries and collections and the conduct of whoever is undertaking the collection are consistent with our rules and framework.

Q21 **Alison Thewliss:** Some banks in the past have been severely and publicly criticised for the way in which they have dealt with SMEs in distress. How can you be sure that that is not going to happen again?

Nikhil Rathi: We are well aware of the history, whether that is the RBS GRG case or the HBOS Reading case. My predecessor at the FCA issued a letter at an earlier stage in the pandemic making it very clear that we would be watching conduct here very closely. The banks are also well aware that they do not want a repeat of what happened after the last financial crisis and, hopefully, collaboratively, we can make sure that does not happen.

Q22 **Alison Thewliss:** Watching conduct is one thing, but at which stage would you step in?

Nikhil Rathi: We will be monitoring. We will obviously be receiving intelligence and information directly from businesses and other bodies. If we are seeing activity that we believe is inconsistent with our rules, we will be supervising that closely and we will intervene.

Q23 **Alison Thewliss:** This will also be a test for the Business Banking Resolution Service. Are you doing anything to monitor that specifically?

Nikhil Rathi: That is due to be established soon for a certain category of historical complaints, and also complaints that fall outside the remit of the Financial Ombudsman Service. We support and welcome the initiative to establish it, and we will be keeping a watching brief as its work gets under way.

Q24 **Alison Thewliss:** Moving to the pressures on the bounce back loan scheme, it has been expanded to 31 January, which is probably helpful for businesses in this context. I have had concerns from businesses in my constituency about the ability of banks to handle a rush of applications and the way in which they are processing applications at the moment. For example, I have a business that has had a three-month wait for its application with no end in sight. Is there anything further that you intend to do on this issue?

Nikhil Rathi: I know there has been a concern about the sheer volume of applications. That has meant that a number of banks have limited the applications they will process to existing customers, so there is a declining availability of banks that will lend to customers who are not already on their books. I am willing to take away the specific point you make on the timetable. That has not come to us as a systemic issue just yet.

Q25 **Alison Thewliss:** There is a risk, if the scheme is closing, people have



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had their application in process, they get a rejection at the last minute and they are trying to chase that money before the scheme closes its doors.

Nikhil Rathi: That is true, although I believe the Government have extended the deadlines.

Q26 **Alison Thewliss:** Extending the deadline does not mean that that still will not be a problem. It is a moving deadline.

Nikhil Rathi: Yes.

Q27 **Alison Thewliss:** Do you have any particular figures for how many applications for loans are currently outstanding and any further information on delays that people are experiencing?

Nikhil Rathi: I do not have up-to-date data on the number of applications outstanding that are not approved. I have data on the number of loans that have been issued, but not the ones that are still in the system.

Q28 **Alison Thewliss:** Do you think it would be useful to have that information?

Nikhil Rathi: The British Business Bank and the Treasury are leading on this. The bounce back loans were taken out of the regulated activities order. They are not inside the FCA's remit specifically because it was a guarantee scheme run by the Treasury. It is not something that we are tracking, but other agencies are looking at it.

Q29 **Alison Thewliss:** Similarly, are you able to track if some banks are processing things better, faster or more accurately than others? There is a risk of fraud as well.

Nikhil Rathi: We are in dialogue with banks about these issues of fraud. I know the British Business Bank is looking to publish more data on this, perhaps on a monthly basis—or at least collect more data on this on a monthly basis—to bring more visibility to the issue.

Q30 **Alison Thewliss:** Financial services SMEs are obviously a significant part of the economy as well—part of the Scottish economy—and contribute to our GDP. They are also suffering because of the Covid crisis. What is the outlook for the small firms that you have a role in regulating? Are you doing anything particularly to prepare for the knock-on effects on their customers?

Nikhil Rathi: Absolutely, and you are quite right to highlight that these are very challenging economic times for all businesses, but particularly small businesses. We are seeing increasing signs of distress among small businesses in the financial services sector, including those that are regulated. We have established new teams and new data analytics tools to try to analyse and understand which are the firms that are most at risk by looking at their balance sheet data, liquidity and other metrics that we can track, to get a sense of where we see the biggest risk of failure.



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We are not going to be able to prevent failures in this economic climate. We regulate 60,000 firms. The economic stress is severe and some businesses are struggling. There are other support schemes that have been put in place by the Government. We are looking, with that work, to understand where the risks are and what steps we can take to make sure that, in the event of failure, the harm to our objectives is minimised, particularly any harm to consumers. We are looking at issues like safeguarding of client money. In particular, when a firm fails, unfortunately there is pressure sometimes to use client money for reasons it should not be used for, so we are watching that kind of issue quite closely.

Q31 Alison Thewliss: That is good to hear. Is there any particular concentration in particular sectors, particular types of firms, that give you cause for concern and that perhaps need further action from the Government?

Nikhil Rathi: There are issues with a number of small financial services firms and some small financial advice firms and SIPP operators, which you are aware of and we touched on earlier. There are certain areas where there are pressures, but there is also a generalised economic challenge. For firms that have not been doing that well, even before the crisis hit, the first lockdown and now the second lockdown may be the tipping point for them.

Q32 Harriett Baldwin: I am going to change subject now and move on to the regulatory framework. I will start by asking about the future regulatory framework review and the second phase of that. When you were going through your appointment process, did this review come up in those discussions with the Treasury?

Nikhil Rathi: We talked in a very general sense about the future of regulation after the UK leaves the European Union, but the context in which the UK leaves the European Union and the nature of any agreement has been a very fluid conversation and there was no certainty during my appointment process. I do think it is an incredibly important conversation to be having. We are approaching the end of the transition period. We have been doing a lot of work to make sure that consumers and markets are prepared. We put an announcement out this morning on share trading as well to reassure market participants that we are seeking to avoid disruption to the extent that we can. Obviously, there is only so much we can do unilaterally.

Looking to the future regulatory framework, one thing that is going to be important is an ability, particularly in the current climate, for the FCA—and I am guessing also the PRA—to move with pace and agility, to continue to respond as we have done in the last six to nine months during the crisis.

Q33 Harriett Baldwin: In your appointment discussions with the Treasury, you would not say that this particular framework review was highlighted



to you by the Treasury as being important. Did they give you any steer as to what they wanted to see out of it?

Nikhil Rathi: As I said, we talked very specifically about the importance of establishing a strong, high regulatory standard framework after the UK leaves the European Union after the end of the transition period, and the role the FCA has in providing thought leadership and contributing to that. We did not go into the detail of the specific paper that has now been published, no.

Q34 **Harriett Baldwin:** Did the FCA, as an organisation and an institution, have any role in creating the consultation document?

Nikhil Rathi: I have been briefed by colleagues. It was before my time that a lot of this work was done, but, as I understand it, there has been a very regular dialogue between the Treasury, the Bank of England and the FCA on how financial regulation should work in the future, what the different options are and the different approaches that could be taken. I believe there has been a good continuous input. That is continuing on my arrival.

Q35 **Harriett Baldwin:** What do you think should be the FCA's priorities with regard to the future regulatory framework review?

Nikhil Rathi: We need to set a framework that ensures we can continue to maintain high, internationally consistent regulatory standards delivering our objectives to protect consumers and ensure that markets function well. That is important. Within that overall context, we need to have a framework that is flexible enough for us to manage the next few years where we are going to be seeing very significant changes in the financial services industry, the use of technology really changing the way in which firms operate, their business models and the way in which we are also thinking about how we supervise and regulate as well. We need a framework that enables us to be thought leaders and to adjust to what is going to be a very fast-moving several years ahead of us.

Accountability is going to be very important. That is an important theme. Alongside that, to the extent that colleagues may debate the advantages of moving to a new framework after the end of the transition period, being able to move with pace and agility is going to be very important. It gives us a bit of an advantage relative to other regulators around the world that we have a system where, when we need to, we can move fast to adjust to market developments.

Q36 **Harriett Baldwin:** Speed, accountability and the ability to adapt quickly are your top priorities.

Nikhil Rathi: Yes, and a framework that does not seek to move us away from the anchor of high internationally consistent regulatory standards.

Q37 **Harriett Baldwin:** Charles, are you planning, at the FCA, to put in a submission to this particular consultation?



Charles Randell: We discussed this, Nikhil, as I recall, recently at the board. It has not generally been our habit to submit to Government consultations where we are effectively the object of them. We probably will not put in a response, but I would expect that, when the Government have had a range of stakeholder responses and are considering their next steps, that they will want to get our opinion on the technical and policy challenges for us and the Bank of England. It is in that context that we would seek to discuss with Treasury officials how the options should be put to Ministers. To be clear, we do not get to choose what those options are, but it is helpful if we can bring the practical side of things to bear in the Treasury's assessment of the feedback that it gets.

Q38 **Harriett Baldwin:** One part of the new regime is "activity-specific policy framework legislation", which would be high level, "focusing on the overall purpose approach and key policy considerations relevant to each particular regulatory regime". That sounds as though there is scope for the Treasury to be a lot more directive. Is that going to be useful? Is that your analysis of how it is going to work for the FCA?

Nikhil Rathi: These are conversations that are under way in the context of the consultation. It is important that, where there are big public policy choices to be made—inevitably, in the financial regulatory space, there are some of those—Government and Parliament establish those policy choices and we operate within them. I would hope that, once that overall framework is established and those public policy choices are made, we have the ability, with the appropriate accountability to you on this Committee and Parliament more generally, to then operate with appropriate pace and agility, consulting in the normal way, so we can run an efficient system.

Q39 **Harriett Baldwin:** Do you not think it sounds like there is quite a strong risk of an increase in legislative control of the FCA, to the benefit of the Treasury and against the independence of the FCA?

Charles Randell: It is worth highlighting the system we are coming from and the system we are going to. The system we are coming from is one in which an enormous proportion of our rulebook—actually the major part of it—has been determined through a political process in Europe, with the intervention of both the European Parliament and the Council of Ministers. If we are moving to a situation where some of those functions are being onshored, it is probably inevitable that there will remain a political law-making element to that.

We need to find the sweet spot between policy choices that Parliament has a role in and then, within the broad direction of the policy choice, the implementation of technical rulemaking that is focused on outcomes and activities, is flexible enough to catch a very fast-changing world and gives us the ability to intervene rapidly when we need to, but clearly within a framework of transparency. To be clear, it is not as if we were coming from an environment in which the regulator decided everything and we



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are now moving into a world in which politicians control. We are replicating, to some extent, the balance that we already had.

Q40 Harriett Baldwin: The consultation proposes a more formal process where Ministers can feed into your policy development before the proposals are put out to consultation. I just wondered how you saw that affecting the perception of your independence and your independence itself, and how you would describe your current dialogue with Treasury Ministers specifically.

Charles Randell: You are right to highlight that there is a risk that that process could be used to try to politicise the independent regulator, but at the moment we keep Treasury colleagues closely in touch with significant steps we are taking and have dialogue with them and with Ministers about it. We also operate within a remit letter that we receive from the Chancellor at least once every Parliament, in which the Chancellor communicates to us the Government's overall policy objectives within which he would like us to operate. The Board has regard to that when we are making rules and guidance.

Will this significantly change that balance? It is a good question to ask because, probably, all concerned feel that the UK's ability to say that it has an independent regulatory system is a very important part of the regulatory landscape. I suspect that both Ministers and we would recognise that that should remain the case.

Q41 Harriett Baldwin: Would it be a way of safeguarding that perception of independence to publish, for example, minutes and notes from when you have meetings with Ministers so that people like us can have the ability to scrutinise how much you are being leant on?

Nikhil Rathi: We have regular dialogue with Ministers be they Treasury Ministers or other Government Departments including, for example, DWP on the pensions work. That is what you would expect. For example, on Saturday, as these announcements were due to be made, Ministers contacted us and explained to us the overall context. That informed our thinking as to how we would use our independent powers to take further steps to support borrowers and mortgagers. That is good public policymaking and what you would expect.

Q42 Harriett Baldwin: Should it be minuted, so we know when these things happen?

Nikhil Rathi: I understand. We are appearing before you on a regular basis, and we are happy to account to you. I am very happy to account to you as well as to the basis on which we are making decisions and the degree to which we may have any concerns in that regard. It is only early days. In the first month, I have not identified any at this juncture.

Q43 Rushanara Ali: Good afternoon. I wanted to start off with some questions about mortgage prisoners and the regulatory perimeter, and then go on to a couple of other wider points. Nikhil, in your appointment



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hearing, you told us that you would take a look at the position of mortgage prisoners as a priority. I appreciate you have only been in place for a month. Can you say something about what you have found and whether you have commissioned any work internally building on what your predecessor has done in shifting the focus, following our work with the Committee, to change the absolute test to a relative test? How many people now have access to mortgages and are no longer trapped?

Nikhil Rathi: This is an area where the FCA has, prior to my arrival, done a huge amount of work. As we discussed in my pre-commencement hearing, there are many dimensions to this that go beyond the FCA, given that a number of the books that we are talking about were books that were held by the Government and then sold to third-party mortgage administrators and lenders. The FCA published some research last year, which gave an overall estimate of the number of people affected, which is in the region of 250,000. That has probably decreased a little over the last year.

The steps that the FCA took to adjust the affordability rules, to enable the people affected to switch to a new lender without the same affordability checks as would be needed under normal circumstance, are now, I think, bearing fruit. Those rules are now in place and we have seen approximately seven lenders, so far, starting to offer products, including three of the largest lenders in the country, to enable people to switch should they choose to.

In October, we also issued some guidance, so, where a mortgage book is held within another group entity of a financial institution or a bank, the guidance enables the customer in that mortgage book to switch to a product from another part of the bank as well. We think, approximately, 170,000 of the estimated 250,000 have the potential to benefit from these affordability checks.

Q44 **Rushanara Ali:** How many have done, and what will you do to try to help meet that target?

Nikhil Rathi: Earlier this year, there was a delay, because of the conjuncture, in launching new products.

Q45 **Rushanara Ali:** Taking that into account, building that into your framework, how do you see this progressing so we get a conclusion? This has been going on for some years now. I have been partly campaigning through this Committee on it for about two or three years.

Nikhil Rathi: To manage expectations, it is a complex issue and I do not think we are going to have a logical conclusion to it. You are talking about a number of people with very different circumstances. For example, we estimate that 37,000 of those 170,000 are on a better deal now and are not going to switch because they might not find a more attractive deal. There will be others who do not want to. We are also seeing the interaction with the current mortgage market. Bear in mind all



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these mortgage prisoners are able to take advantage of the payment deferrals, payment holidays and no repossessions until the—

Q46 Rushanara Ali: That is temporary. With respect, your predecessor ran through some of this and we made some progress. I do not want us to go backwards, and I see that there is quite a lot of commitment. I want to bring in Charles as well. What would be really helpful is an action plan on how the FCA is working with the Treasury, because there was quite a bit of joined-up working, and UK Finance and others, to try to get more pickup on these issues. I am really encouraged by the number of banks that are now taking it up.

I just wanted to widen my question for Charles's benefit. This issue of people being trapped in mortgages is a bigger one because, when Government sell off the mortgage book, the terms of reference change and the purchasers then stop providing mortgage products, that puts many more at risk. Do you see that being a growing problem in terms of unintended actions or perhaps calculated risks that the Treasury takes in selling off the mortgage book worth billions, and this then having a knock-on effect, as we have seen in relation to the post-financial crisis, for other groups? This has come up and we have raised it with Ministers in the past.

Of course, there are some other groups that are finding themselves trapped in mortgages, like those who cannot get EWS1 forms because of cladding, and the Government have not put the funding and the provisions in place to remove the cladding so that the market can lend. What should the FCA, working with the Treasury, do to unblock this? The Ministry of Housing, Communities and Local Government cannot do this because it is a financial services sector issue and a Treasury issue.

Nikhil Rathi: On the first point around mortgage books being sold, that is a fundamental part of the mortgage market through mortgage securitisations. There should be transparency at the point of the contract as to what may happen to your mortgage, but we also have regulation to make sure that anyone who is administering a regulated mortgage complies with our rules including communicating about mortgage options at key points in the cycle.

Q47 Rushanara Ali: You are aware that there are cases where the Treasury has sold off the mortgage book, there have been commitments made and then mortgage products are not offered.

Nikhil Rathi: I am aware, in the context of the specific mortgage prisoner situation, that there is a category of borrower that, for particular reasons, has not been able to switch. That is the work that my colleagues at the FCA have been doing to broaden the availability of banking products. We cannot force a new bank to lend outside its commercial risk appetite, and that is the most challenging part of the situation. For those borrowers who may have an LTV above 100% or may have substantial arrears, it is quite hard to find a new lender who is willing to take them on.



Q48 **Rushanara Ali:** I was referring to the Government-owned shares in banks and selling off to lenders who then shift the goalposts so that the mortgage you might have taken out through the bank is no longer available to you.

Nikhil Rathi: You are not able to switch product in the same way because the range of products available is not the same. I understand. On the cladding issue, and you raised this the last time I was before the Committee, we have done some further work on it. The FCA is not at the centre of this because the core issue has been the new rules about external wall safety checks and the number of fire safety engineers who are properly trained and able to conduct those checks.

Our expectation of firms is that they treat customers fairly, but also that they lend responsibly. Part of lending responsibly is making sure that the building you are lending on is safe and that, if you are lending against a valuation, there is not going to be a sudden impairment in the valuation of the flat or the building because remedial works are going to be needed. The core of the issue is, unfortunately, the lack of quality and construction standards in a number of buildings right across the country over a number of years, and the work that has to be done through fire safety checks and remedial work to get that sorted out. That will take time.

Q49 **Rushanara Ali:** Does something need to be done in the interim between Treasury, FCA and the banking sector? I have one of the highest numbers of blocks with cladding in my constituency. Families are stuck and their flats are worth next to nothing in reality because of this issue until the work is done. There needs to be some sort of interim measure to help them move while this is being dealt with, because this has gone on for three years and it could go on for many more years.

Nikhil Rathi: There is work going on between the banks and the Government to look at more risk-based systems, so not having to do the full check. That is also involving surveyors and others to understand what level of comfort is needed. You have a constituent who is in a flat and cannot sell the flat. The buyer of that flat needs some assurance of what the cost may be of remedial works, and it is landing on that cost that is the challenge because you need engineers who can assess that work for you.

Q50 **Rushanara Ali:** In effect, banks are de-risking, a bit like they did after the financial crisis in other areas, and you can understand why, but our constituents are stuck and this is not going to get resolved unless there is a remedial, intermediate response package to deal with it. What I am pushing you to think about is how we avoid a silo approach to working on this where the FCA says, "It is something to do with us but not entirely." Treasury says, "It is an MHCLG issue," and that is what MPs are being told constantly. Institutions are passing the buck while our constituents are stuck, literally, in their flammable flats not able to sleep at night.



Nikhil Rathi: We are engaging on this, and we will work in a pragmatic way with lenders, but, as I say, the core issue is getting the number of engineers out there.

Q51 **Rushanara Ali:** Charles, I have one final question to you, and you could pick up on any of these points. There are big concerns, which have already been picked up in previous questions, about consumer protection, the implications of Covid and indebtedness. Debt recovery is a big concern for many of us in terms of our constituents, which was bad enough in the first place with loan sharks and the rest of it. Some regulations and Government interventions have helped, but it is going to be much worse. That also includes public sector debt recovery. The use of bailiffs is a widespread problem, and some of the practices are appalling. We had debates on it in the last Parliament.

What role do you see the FCA playing, directly but also in partnership with others, in looking at where the trends are and how we can mitigate this proliferation of debt recovery as an additional burden on people that is very insensitively done and causing more damage and harm to consumers?

Charles Randell: All the questions that you have raised are co-ordination problems with multiple public authorities involved. They are all areas in which the FCA is not the ultimate policymaker. We stand ready to take part in any process with any policymaker that will help to advance these issues, and we have gone up to the limit of our powers in many cases. I just want to reiterate that. We, honestly, are doing everything we can. Many of these are questions that probably should be directed to other places. I know that is a frustrating answer to give you.

On the question of debts, we see increasingly that the major debts that people are going to the debt counselling services with tend to be council tax, utility bills and rent. Those are not debts that we regulate the recovery of. On council tax, as you know, we are probably the only country in the western world that still, theoretically, can send people to prison for non-payment.

Q52 **Rushanara Ali:** Should you be regulating them?

Charles Randell: I am not going to tell you what I would do if I ran the country, because I am sure I would make a big mess of it. There is a significant co-ordination problem here. The funding of debt recovery falls disproportionately on the financial services sector. The debt advice world is funded largely by financial services firms. The way that priority payments work in debt repayment plans is that, generally speaking, the financial services firms sit at the back of the queue for payment. It is a really difficult area that requires a lot of attention during this particular crisis and the long period of vulnerability that may come after it. I would welcome and would be very happy to participate in giving the FCA's support to any policy initiatives that take place in this area.



On debt advice, we have worked very intensively over the last six months with the Money and Pensions Service to try to ensure that the funding is there and that we have reacted very quickly to plans that particular debt counselling charities have come up with for simplified advice and solutions. We have done what we can. My commitment is that we go on doing that.

Q53 **Felicity Buchan:** My questions are on overdrafts and mortgages. Nikhil, in January the FCA wrote to financial institutions, asking them about their overdraft pricing. Clearly a lot of people had come in at similar levels, at 40%. What was the FCA's concern at that time? I am conscious that you were not in situ, but was it a lack of competition, or were you concerned about collusion among the banks?

Nikhil Rathi: You are right: I was not in situ at the time, but I have been briefed on it. There is a very enthusiastic briefing team in the FCA that keeps me informed on these issues. There was a move to a new structure for overdrafts in the retail banking market, the removal of the distinction between arranged and unarranged overdrafts, the removal of daily fees, the removal of monthly fees, the removal of arrangement fees. What the FCA was doing through that information request was understanding the way in which banks had come to those decisions on their overdraft structures and rates going forward. You are right that a certain level of interest rate has been prevalent, although some of the challenger banks have also offered rates significantly lower than some of the traditional incumbents.

Q54 **Felicity Buchan:** Were you satisfied with the responses you got? How do you see prices developing? I have read that 70% of customers are likely to be better off, but 30% worse off. Are you satisfied that, for those worse off, the banks are looking to ameliorate their position?

Nikhil Rathi: We have said that we will evaluate these measures during 2021, a year after they have come into force. There were some delays in their coming into force due to the pandemic. There is a wider question about the future of retail banking and how retail banking models are going to evolve as this pandemic evolves and as we fully understand the consequences of it. We will want to look at all these issues in the round.

Our data suggests that the banks are making around £0.5 billion less overall on overdrafts than they were before these measures were introduced. The specific concerns we had were for some of the most vulnerable and low-income customers, who were perhaps running into balances of £50 or £100 debit, having to pay £1 or £2 a day, which is a very high interest rate when you add it up cumulatively and compound it. We think those kinds of customers are significantly better off as a result of these changes. Inevitably, when you make an intervention like this, not everybody is going to benefit, and it was not designed so that everybody would benefit.

Q55 **Felicity Buchan:** Let me move on to the mortgage market. We have



clearly seen an upsurge in demand for mortgages, partly, I suspect, due to the stamp duty holiday on properties less than £500,000. Are you concerned about that upsurge in demand for mortgages in terms of the likelihood of negative equity down the road? Do you think that banks are making good lending decisions? I am conscious of the fact that mortgage rates are trending up relative to base rate, probably because of the demand. Again, are you in any way concerned about that?

Nikhil Rathi: At a macroeconomic level—you will be familiar with this from your conversations with the Bank of England—there was a very strong desire, particularly from small businesses, but in the economy generally, that banks continued to lend through the crisis. We did not want a credit shock in the economy, which would have caused even more economic damage than we are already seeing. That is why the countercyclical capital buffers on banks were released, to enable them to lend.

If banks lend through sensible lending decisions, doing proper affordability tests, we do not have any fundamental concerns about that. As we are looking at the impairment levels in the major retail banks—some of them have produced their results recently—we are not seeing any major concerns about impairment and distress, although we are expecting the economic challenges to worsen as unemployment increases in the coming months, so we will need to remain vigilant about it.

You talked about mortgage rates. We have seen in the market some risk aversion from banks in terms of the very high-LTV mortgages because of concerns about where house prices may go once the stamp duty holiday ends. At the moment, there is nothing there that is causing us concern. That seems to be legitimate commercial decision-making, given the risks in the market. Likewise, on the pricing of mortgages, it is not surprising in an economic environment such as this, where there is risk, that pricing will move around a bit as the situation is changing and evolving, but we are watching it with our colleagues at the Bank of England.

Q56 **Felicity Buchan:** The Prime Minister announced to the Conservative party conference that he would like to see 95% long-term fixed-rate mortgages for first-time buyers. Are you involved in the thinking about that? Do you think there will be natural appetite from the banking sector, or do you think that Government will have to get involved with guarantees to an extent?

Nikhil Rathi: I am not aware of any detailed conversations with FCA colleagues before any announcements at the Conservative party conference. We have a set of principles around which we regulate mortgages, in terms of affordability, treating customers fairly and lending in a sensible way. That is a very well-publicised framework, so we will want to assess any proposal that comes through against that framework.

Q57 **Anthony Browne:** I declare for the record that I used to be chief executive of the British Bankers Association and conducted many



negotiations over many years with the FCA, but not with the two current incumbents. My questions are not about Brexit. They are about the future trading relationship between the UK and the EU, as we are now meant to call it. The negotiation is nearing completion; we do not know exactly where it is going to land. How well prepared are the firms you regulate, the banks, insurance companies and asset managers, for a no-deal scenario and if the EU does not recognise equivalence of UK financial regulation?

Nikhil Rathi: Mutual equivalence should, in ordinary circumstances, be relatively straightforward to agree, because we are starting from a position where we are pretty much fully equivalent, but there are wider considerations at play. Given that, over the last three years, banks, asset managers and insurers have been preparing for a scenario where that equivalence is not provided. We have been working very closely with market participants alongside the Bank of England and other authorities.

Overall, our assessment is that the big systemic risks have been well prepared for and that most firms, in a general sense, have prepared. I cannot promise you that there is not some isolated situation where somebody has not done the preparation they need to. On clearing, there has been mutual equivalence granted, which was one of the big systemic risks.

What we cannot predict is whether there may be a degree of market disruption in certain products and instruments, because of the fragmentation of markets in the event that there is no common understanding come 1 January. We made an announcement this morning where we are saying that, for share trading, we are not going to inhibit UK investment firms from finding the best prices they can anywhere in the world to serve their customers well. That is not the approach that the EU has taken to date.

In the area of derivatives, there is a risk that, if we have mutual trading obligations, there could be some conflicting obligations. That might be difficult. For example, a UK branch of an EU firm could be subject to EU obligations and UK obligations that are incompatible, and likewise for an EU branch of a UK firm. We have very openly said that we are open to finding ways to provide relief there, but it requires both sides to agree a way forward.

Q58 **Anthony Browne:** Charles, do you have any particular concerns about the preparedness of the UK financial services industry for a no-deal scenario and no equivalence from the EU?

Charles Randell: This is a scenario that we have had to prepare for a number of times over the past few years. Therefore, there have been a number of dry runs. It ought to be the case that most of the material problems have been identified and that plans are in place to mitigate them, but I do not want to give you false comfort. This is a huge change in the regulatory, legal and trading infrastructure that we have had for a



very long period. There is the possibility that, if the negotiating parties do not reach some sensible conclusions on some issues that ought to be of mutual benefit, there will be some unexpected disruptions.

My concern is that they may fall in areas that are a little outside our direct regulatory remit. There are complications about, for example, firms' ability to use and access data. There are a lot of details about the legal frameworks that will exist in the recognition of laws and judgments, insolvency proceedings and things like that, which do not fall directly into the FCA's remit as a lead regulator. It is the complexity of the total package, which you hope would be worked out in the interests of both sides, that gives rise to some risk that there will be an unexpected problem.

I want to stress what Nikhil says. It seems to us that it is absolutely in the interests of both negotiating parties to come to the recognition of the fact that they do have equivalent regimes, not least so that consumers and businesses, whether in the UK or in the remaining EU jurisdictions, can have the best advice, services and market access that enables them to go about their business with the lowest costs. I am really hopeful that good sense prevails.

Q59 **Anthony Browne:** Can I ask about a retail consumer aspect? Last time when we had concerns about a no-deal Brexit, there were stories about people not being able to use their credit cards when they go on holiday to France or Italy. Not many people are going on holiday at the moment, but hopefully they will do soon. Do you think there is any aspect of a no-deal scenario that could cause retail customers problems?

Nikhil Rathi: We have been working hard on those issues, but there may be certain aspects. On payments, I believe an agreement has been reached to allow the UK to continue to be a member of the Single European Payments Area system, which will ameliorate some of those issues. There are certain types of payment, for example, when more information will be required than if we were a member of the EU: not just name but address details and others.

Some banks have made good progress. The UK banks have generally made pretty good progress in getting that information ready so that there should not be any stopped payments or any pauses. The picture is more mixed in other parts of the sector, with payments coming into the UK. We will need to keep an eye on that in the next couple of months and keep working to make sure those fields are populated in those systems.

The Chair wrote to my predecessor about passive servicing of bank accounts: a UK citizen who moved into the European Union, retired there and kept an account with a UK bank, which may not be able to keep operating that bank account after 1 January. This is a situation that can be solved at the member state level. A number of national authorities have taken decisions to find ways to make that possible, to allow passive servicing to happen. There are a couple of countries that have not, the



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Netherlands being one of them. It has taken a stricter approach. I have spoken to the president of the Dutch national bank and he has assured me that there will be pragmatism about that and the timetables, but obviously UK banks need to comply with Dutch law if they are offering services into the Netherlands.

Q60 Anthony Browne: You were talking earlier about the new post-Brexit financial framework the Treasury is consulting on at the moment. Is there a concern that the EU may not see that as equivalent, or that it leads to some divergence between the regimes in the UK and the EU? As you stated, we are the same at the moment, but we might be going on different paths, and then the EU might decide, "Actually, you are not equivalent any more." What is the arbitration mechanism there, rather than it being just a one-sided decision by the EU?

Nikhil Rathi: The financial services chapter of any agreement between the UK and the EU is being negotiated now by the Government. I think questions about what the arbitration mechanism may be are in the mix there. If you take a very purist position that equivalence has to be line-by-line, letter-by-letter equivalence, by definition any move away from that puts it at risk.

That is not how the EU has historically interacted with other third countries. The US has been deemed equivalent across a whole range of financial regulation, with quite a different mode and way of regulating. The assessment also looks at the outcomes. I can assure you that we are going to have internationally anchored, high regulatory standards, with consistent outcomes with what we agree internationally.

Q61 Anthony Browne: I often made that point when I was chief executive of the BBA, but I have to say that European politics often got in the way. They often see London as a systemic, competitive threat in a way that they do not see New York. Charles, you mentioned equivalence on data. The importance of that is often underappreciated publicly: being able to transfer data both from the UK to the EU, which you have granted, and from the EU to the UK. How serious is it if we are not recognised as adequate in terms of data protection by the EU?

Charles Randell: In the absence of an equivalence arrangement, it is necessary for firms to go down the route of securing their data transfer using contractual clauses. Most well-advised and well-resourced firms have done that. The concern is that some smaller and less well-resourced firms may wake up to this point a bit too late, but all the large players will have been spending a lot of time in the last couple of years making sure that they are ready for this, regardless of the outcome on 1 January.

Q62 Anthony Browne: Those contractual arrangements will have been a letter or an email from the financial services company to their customers saying, "Tick this box if you are happy with us transferring your data to the UK." Is that right?



Charles Randell: Yes. You are probably asking the wrong person to give you chapter and verse on EU data protection law. I think we are talking about contractual clauses that safeguard the consumer's data in the hands of whoever on the continent or in the UK may be holding it, but also secure consent from the customer as to how their data is going to be used.

Q63 **Mike Hill:** My section is on small firm supervision, using the example of the long-running issue of Premier FX, which both of you will know about. Premier FX was a small payments firm that failed in 2018. Currently, there are about 121 registered creditors and a claim value between £6.76 million and £10.6 million. Is the FCA continuing to investigate what happened at Premier FX?

Nikhil Rathi: Yes, we are, and the enforcement team at the FCA is very engaged on these issues. It is a very complicated case, because the controlling shareholder and director has now passed away, and it is taking some time to fully understand some of the activities of that organisation. It had 73 bank accounts; the records were not entirely complete. There is a liquidator appointed. The enforcement team at the FCA is meeting periodically with the liquidator to try to establish the facts and understand the position. One issue that is being looked at is whether this firm was, in effect, taking deposits without proper authorisation.

Q64 **Mike Hill:** I understand that is one of the main arguments. Is there realistically any indication of when that investigation will be completed?

Nikhil Rathi: From the information I have so far, I cannot give you a clear timetable. I can say that the team is looking at this closely. There is a significant team working on it, trying to piece together quite a complex web of transactions. We will provide an update as soon as we can.

Q65 **Mike Hill:** Barclays acted as banker to Premier FX, so is the team also looking at its role? Is that part of the remit?

Nikhil Rathi: I cannot comment on the detail of the investigation of specific firms under investigation, but as part of this work we will look at the full web and network of activities to see if there is anything that causes us concern or requires us to take action. We understand the distress that the clients of Premier FX who lost money must be dealing with here, and we will look to find answers as soon as we can.

Q66 **Mike Hill:** That is a fair, honest answer. Premier FX was a payments provider and was regulated accordingly. Does its failure raise wider issues concerning the payment regulators?

Nikhil Rathi: I might ask Charles to answer that one. As chair of the PSR, he is quite across these issues.

Charles Randell: Premier FX is an illustration of a problem that exists more broadly, which is that the FCA authorises firms for particular activities and sometimes the regulatory approach to the activity that it



has authorised a firm for is relatively limited or light touch. Premier FX was authorised for money remittance. That was what it was authorised to do. The information we have suggests that it may have held substantial sums of money for periods of time, which may have amounted to taking deposits, effectively, not something it was authorised to do.

That is not an isolated problem to Premier FX. There are many other firms that have specific permissions from us to do one thing that do lots of other things. Some of those things are financial; some of them are non-financial. In some cases, where the firm is conducting a financial activity that is not regulated or is not authorised, but is very close to an activity that it does have a permission for, there is a really serious risk, first, of confusion as to what it is authorised for and, secondly, of a perception that the FCA is checking the entirety of its activities in real time. That is not limited to Premier FX.

In relation to the payments sector, there has been a very permissive regulatory stance from Europe on payments firms, which have been capable of being authorised with no significant capital requirements and a very light-touch authorisation process. We have seen, in cases such as Wirecard, that the payments firms really matter to a lot of people in ensuring that they can go about their everyday lives. A lot of people deal with payments firms thinking they are regulated like a bank, when they are not. They have a much lighter-touch regulatory regime and the Financial Services Compensation Scheme does not protect your money if it is in a payments firm as opposed to in a bank.

There is a real issue here. As more and more people use different methods to pay and interact with different firms, there is confusion about the protections they may expect to receive and about what the FCA can reasonably expect to provide. This is going to be a focus of our work over the coming year, to try to clarify to a much greater extent what people can expect from us when they are dealing with smaller firms in particular.

Q67 Mike Hill: The Premier FX failure raises important issues about the supervision of smaller firms. In your business plan, you have announced that there is going to be a shift in focus towards dealing with smaller firms. Given the Covid-19 intervention, has that shift realistically occurred yet?

Charles Randell: I am glad you asked me that, because it is important for us to explain that our response to Covid-19, which personally I think has been rapid and appropriate, has involved us pivoting probably over 1,000 people within the FCA to various coronavirus-related response activities. Inevitably, that has some impact on our plans, our ability to change and the policies that we would like to take forward. Maybe I can pass over to Nikhil very briefly to expand on that further, but it is going to be difficult for us to achieve the rate of change that we want to achieve in some of these areas because of the pressures of coronavirus and, indeed, the uncertainties about the terms on which the transition period will end.



Nikhil Rathi: I would echo what Charles says. I would stress that there is no change in the determination here to make sure that we are focused on these issues across the small firm population. When I was before the Committee last time, I talked about how we have to take time to do that through even further investment in our data analytics information intelligence capabilities. We are progressing in that domain. In the work I talked about earlier of thinking about the firms that may be at risk of failure, we are seeing some of the benefits of using some of those techniques.

At the same time, we have had to postpone things. For example, the full rollout of the senior managers regime was going to take place and be completed later this year, certifying everybody across the solo-regulated firms population. We pushed that out to next year, because we had to be cognisant of the pressures on small firms during this period and their ability to comply. There is inevitably a degree of slowing down in some areas while we focus on the urgent priority. We were hoping to get back up to normal service through September and October, but that has changed in the last week and we are having to look at reprioritisation, again, of a number of other activities.

Q68 **Mike Hill:** Nikhil alluded to the potential losses in the Premier FX case, and I appreciate that you cannot go into any detail on that, but my understanding, from the figures I used, which are on the public record, is that some of those amounts can be life changing to individuals. Bearing that in mind, should the FCA place a higher priority on supervising small firms handling large accounts as opposed to large firms handling smaller accounts?

Charles Randell: We clearly need to ensure that our supervision of small firms is as responsive as possible to the risks they pose to consumers. That is particularly challenging where the harm they cause comes out of unregulated activities, where they are not required to provide us with information, or illegal activities that they should not be carrying on with the permissions they have.

Sitting suspended for a Division in the House.

On resuming—

Charles Randell: It is right that, in the first five or so years of the FCA's existence, quite a lot of the priority has been on large firms. That was quite natural in the wake of the misconduct that was revealed by the global financial crisis. These were quite often large firms handling large amounts, by the way, not just large firms handling small amounts. We have become increasingly conscious, as conduct standards in the large firms have improved overall compared with the position before the global financial crisis, that small firms have a huge capability to do harm, very often internet-abled harm, and to do it quite rapidly. Consumers take decisions much more quickly now; they very often take decisions on their



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smartphones; they interact without using intermediaries; and unfortunately they believe quite a lot of what they see on their screens.

It is important that we flex our approach to supervision, use all the data and intelligence that is available to us across the FCA in the best way possible, and intervene as promptly as we can with small firms. This is a big undertaking, to be as good as we can be in this area. We have made a number of changes already in the way we supervise firms in the last couple of years, but there is a lot of work to do to achieve our full potential in this area using data analytics. We have demonstrated, in the last six months of this Covid crisis, the speed of action that we can bring to bear. It is an ambition I have, and I know that Nikhil shares it, too.

Q69 **Chair:** Nikhil, you said you would update us on progress on the investigation into Premier FX as soon as you are able. Can you be any more precise than that? What sort of time range might we be looking at, before you can tell us something more?

Nikhil Rathi: The enforcement team is meeting with the liquidators every few months. I do not have information to suggest that we are very close to reaching a conclusion. I think there will be a number of further rounds of engagement with the liquidators to try to piece together exactly what has been going on in all the different accounts. The pandemic complicates some of those investigations as well, in terms of being able to do face-to-face interviews and so on. My guess is that it will be at least six months before we are looking at a conclusion, but maybe I can come back to you, Chair.

Chair: If you could write to the Committee to say what you have to say on that point, that would be very helpful.

Q70 **Julie Marson:** Nikhil, can I turn to pensions? The Covid crisis and the pressure it is putting on people's livelihoods could well lead to an uptick in people wanting to release money from their pension pots. Have you seen any evidence that that is the case? Have you projected what it might be and what the scale of that might be?

Nikhil Rathi: Yes, we have seen evidence that there is an uptick in certain situations of certain firms looking to advise pension customers, particularly defined-benefit pension customers, to transfer out of their schemes. As you may have seen, with the Pensions Regulator and the Money and Pensions Service, we recently issued some warnings on the Rolls-Royce pension scheme in particular. We received information that there were some advisors, in the context of the challenging situation that Rolls-Royce is in at the moment, looking at pensioners and seeking to get them to transfer out. We have said very clearly that we think there are very few circumstances in which it would be in the best interests of consumers to undertake such a transfer.

More broadly, I do not have data available on the early drawdown of pensions. That is something we can go away and have a look at.



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Q71 **Julie Marson:** On the wider aspect of it, the FCA is supposed to be producing rules on the provision of financial guidance, as per the Financial Guidance and Claims Act 2018. Why have you not done that yet?

Nikhil Rathi: I will need to write to you on that. I do not have the answer to that question directly. Let me look into that point specifically.

Q72 **Julie Marson:** That is a very important aspect of, particularly, pensions. There is quite a lot of evidence that having Pension Wise engagement improves people's outcomes when it comes to releasing their pension pots, yet uptake is less than one in four, as far as I know. More people could be doing it and it would improve their outcomes. What is your plan to improve the uptake of Pension Wise?

Nikhil Rathi: We agree with you that the uptake of Pension Wise is important. We are pleased that there has been some increase, but we think that further measures are necessary. Some things we are thinking about and discussing with relevant stakeholders are, for example, at certain points in people's lives, pension providers proactively contacting their customers and explaining to them the option to take up Pension Wise. For example, when you hit 50, 55 and other ages, you get a pack from your pension provider saying, "This Pension Wise service is available. This is how you can get in touch. These are the benefits of getting in touch." There is some of that going on. DWP is also looking at some stronger behavioural nudge measures for consumers to push people in the direction of getting this advice.

Q73 **Julie Marson:** There are options open to you to make it a default, so that people are automatically made an appointment and they have to cancel it. There is a stronger mechanism that you have at your disposal at the moment. What would be the ideal? What would be your target uptake, and when would you aim to reach that? Do you have such targets in mind?

Nikhil Rathi: This is something we would need to work on with the Pensions Regulator and DWP. I do not believe we have a collective target for uptake. There is also the question of the funding of the service and capacity versus demand. Giving everybody appointments would be quite an expensive way of running that service. We are quite keen, as I said, to work on these measures around nudging consumers. Where we need to put in mandatory points for firms to be contacting proactively much more frequently, we will do so. On websites, for example, we can use nudge techniques so that, when people are searching for particular types of information on pensions, the Pension Wise information becomes available to them and they can explore it at that juncture.

Q74 **Julie Marson:** I appreciate your answers, but we have a situation where there is potentially a big increase, with financial pressures creating a risk to people, who can lose their whole savings. It is a potentially catastrophic risk to people. There is a potential increase in the risk, in



terms of the numbers and scale of it. There is no financial guidance being produced to date. The actions that you have taken proactively to improve the uptake of Pension Wise are slightly vague, with due respect. Altogether, that leaves a big risk for people, doesn't it?

Nikhil Rathi: I understand that, on 28 October, DWP put out a clear policy statement on what it called "stronger nudge," which set out a set of steps as to how it would encourage take-up of Pension Wise. We are working with DWP on the guidance on the Financial Guidance and Claims Act, which you mentioned earlier. When you look at it from both angles, there is the advice you give to customers, ensuring they have access to Pension Wise. There is also making sure advisers are behaving properly, which is what we have done in the Rolls-Royce situation. We have taken proactive action to contact advisers to make sure they are advising only in the best interests of consumers when they are being approached for advice on transfers.

Julie Marson: With the Chair's agreement, perhaps I could take you up on your offer to write to us with more information, on the Act, on what your guidance will be and what you will be doing, and on those further, stronger measures to protect people.

Chair: Yes, that is fine by me.

Q75 **Julie Marson:** Nikhil and Charles have both mentioned websites. Obviously there are scams. A cursory search, particularly by people looking for higher risk and higher returns on their pensions, can easily find scams. What are your concrete plans? Are you working with Google and other providers, or are you looking at legislation? What are your plans to protect people who are looking on the internet for such providers or options?

Charles Randell: There are a few things I would like to say. First, the very clear advice that anybody watching this should take is that, if they are thinking of making an investment decision based on something they have found on the internet, without dealing with an FCA-authorized firm and seeking advice from them, they just should not do it. If you do a search on Google against a phrase like "high-return investments", in my experience there is still a disturbingly high percentage of what appear to be blatant scams. The starting point is not to do it. That is not the right way to engage with investment decisions. You should deal with reputable, authorized firms and not search around on the internet for your answer. You may find reputable, authorized firms on the internet, but that is a different matter.

Secondly, we have been engaging with Google to see what can be done to reduce the incidence of these scam ads on its search service, particularly its advertising service, Google AdWords, which is what promotes these scam ads to the top of the results. Nikhil and I have both engaged recently at a very senior level with Google. The determination has been expressed on the Google side to really grip this. We welcome that. We have instituted a cycle of monthly meetings with the senior



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management of Google, which will continue until this issue is in a substantially better place than it currently is.

That is what we are doing with Google. We welcome the engagement with Google. It is not a firm we authorise or regulate, and therefore we proceed by way of discussion and engagement of a non-regulatory type. It is certainly preferable that we should do that rather than have to reach for the civil and criminal weapons that may be in our armoury, which I am sure no large multinational company would like to see us trying to reach for. That is how we are engaging with Google.

There is a pressing policy issue here for us to work on with policymakers. We have asked for further evidence on this in our call for input. Many of the scam advertisements we see appear to be proceeding by way of an exemption from the financial promotion order. This is an ability for consumers to contact somebody selling investments if they go through a journey that says, "I am a high-net-worth individual", "I have more than £250,000 of investable assets or savings apart from my house" or "I am sophisticated".

It may sound like a lot of money; £250,000 is a lot of money, obviously. But when you get to age 65 and attempt to use that money to buy an annuity that is index-linked and that will last you and your partner until the end of your days, you will find that it does not make you a high-net-worth individual at all. It will give you, if you are very lucky, £6,000 or £7,000 a year, which is a significant sum, but not the sort of money that enables people to risk their savings.

The use of that exemption, whether it is being used legitimately or whether it would be better to close it down and give us a much clearer bright line that we can work on with Google as to what can appear and what should not appear, is one of the things we have to get to the bottom of. We do not have the ability to change that rule.

Q76 Julie Marson: I appreciate your answer. You said you want to get to a stage in your meetings with Google where you will be in a substantially better place. Will we have some transparency about what targets you have, what progress you are making and whether you are making it to a substantially better place?

Charles Randell: We agree with Google that the test of this will be whether, when a range of individuals with different circumstances search on Google for investment products, they no longer get scam advertisements, or that those scam advertisements are the exception. That is not where we are at the moment. Google has already made some changes to its processes, but we are discussing further things it needs to do to reduce the incidence of these. Discussions are constructive. I do not want to shame Google in any way, but progress needs to be seen.

It will be judged by the results as to whether people searching for plain vanilla investment products are getting these sorts of results. The trouble



is that the results you get with your browsing history, and the results that I get or Nikhil gets with his browsing history, will be different, so we need to ensure that Google knows who is seeing what as well.

Q77 Ms Eagle: I want to carry on in the pensions space, following on from Julie, because I am quite concerned about some of the answers you gave to her. It seems to me that, in this space, particularly with the advent of pensions freedoms, so-called, in 2015, there are sharks circling. If they succeed in conning people out of their life savings, there is no going back for those people. Many of them end up with huge tax bills, as well as no money and a ruined retirement. Surely, Mr Randell, "stronger nudge" seems a bit of a weak response in that circumstance.

Charles Randell: We are addressing this on multiple fronts. The first front is that we have very close working with the Pensions Regulator to ensure that we are well informed about situations where pension schemes are seeing significant applications for so-called cash equivalent transfer values, where members are coming to pension schemes and saying, "I am thinking of cashing in my pension or moving it somewhere else."

Through the Pensions Regulator and the expectations it puts on trustees, we now have a better early warning system for schemes where members are being targeted in this way. That is the sort of intelligence that led to the very specific warnings we have given about the Rolls-Royce pension scheme, where we are trying to prevent a situation rather than chase round after the event.

Secondly, with those firms that have defined-benefit pension transfer advice permissions, we have been doing a systematic and intensive supervision programme, which assesses the suitability of the advice they have been giving. That has involved an enormous number of file reviews. At the early stages of those exercises, we found that the level of unsuitable advice was concerning. In the more recent reviews we have done, we have seen the levels of unacceptable advice, unsuitable advice or advice that cannot be explained coming down significantly, so we are seeing a significant improvement in the quality of advice.

Q78 Ms Eagle: Billions of pounds are being taken out of pension schemes and almost certainly put into other funds that will give a far poorer return than you would get out of a DB pension scheme. You are behind the curve. You are still looking round to see whether you might be able to do something to issue a slightly louder warning.

Charles Randell: I do not agree with that at all.

Nikhil Rathi: To give you the statistics on this, since we have intervened in the way Charles is describing, 745 firms have stopped giving this advice. When we did the first survey in June 2019, 3,015 firms were providing this advice. There has been intensive supervisory intervention. Now 745 firms have pulled out of that market and are now no longer



actively advising transfers from DB pension schemes. We have 30 ongoing enforcement investigations, and there is now this early warning system with trustees and with the Pensions Regulator, as we saw with Rolls-Royce.

Q79 Ms Eagle: Do you have a warning list of places where DB pensions might go that you would regard as dodgy? You have a list that you have developed, don't you?

Charles Randell: We have a list of scam investments, which is a different matter. It is fair to say that the real harm in this area is when people transfer money out of a relatively stable defined-benefit pension scheme, which, yes, if the employer fails, might go into the Pension Protection Fund and there might be some reduction in members' benefits, but fundamentally it is backed in very large part by a mutual fund, into their own bespoke pension arrangements, which through a combination of advice fees, fees on the underlying investments—

Ms Eagle: And hidden transaction costs that eat away at their pension.

Charles Randell: —and transactions costs, may give them a worse result. That is why we have banned contingent charging in this area. It is why we have said very strongly that we think, in the overwhelming majority of cases, pension transfers will not be in the interests of members. Therefore, our supervisory activity proceeds from that basis, that we need to see why it is a suitable decision for them.

Having said that, there is an issue, which I am sure you recognise, that people either have pension freedoms or they do not. Fundamentally, if the regime is supposed to give them the ability to make choices about how their money is invested, that will unfortunately include people making choices that we would regard as poor. We need to find the right level of intervention that means we can have confidence that financial services firms are making the choices clear to their customers.

Q80 Ms Eagle: What is the status of the warning list of scammers? I know it exists. Can you stop people moving their money there? The Pension Schemes Bill going through the House of Commons at the moment means that trustees, even if they know that an individual member has asked to move their pension into what you know is a scam, cannot refuse to do that. That seems wrong to me, very wrong.

Charles Randell: We do not have direct supervisory powers to tell trustees what to do and what not to do. They are regulated by the Pensions Regulator.

Q81 Ms Eagle: I understand that, but you have a warning list of scams. Do you not think the regulator should be able to actively stop somebody moving their money into a company that is on your list, rather than a legal duty on the trustees to allow that transfer, even though they know it is a scam, just because an individual has asked for it? That seems to be taking personal choice to ridiculous extents.



Charles Randell: As I say, we do not regulate pension trustees, but I would personally welcome any step that makes it much harder for individuals who may have been placed under pressure to make choices that are very poor for themselves. It would not involve our regulation; I think it would have to involve the Pensions Regulator.

Q82 **Ms Eagle:** Legislation has been introduced to enable pensions dashboards to be introduced. The Government have decided to allow multiple dashboards, some with commercial interests, to be introduced at the same time, not just one single dashboard. Subsequently, the Government have decided to allow financial transactions capability on those dashboards. You described how, with quick, internet and smartphone-enabled decisions, the capacity for being conned has gone up a lot. Do you worry about the combination of those things?

Charles Randell: This issue about people making poor choices when exercising the freedoms and responsibilities that have been put on them in the last 10 years, through a variety of changes in Government policy, is probably the one that I worry about most of all. The pensions dashboard, I think, is some way off, but it will be really important that the safeguards that help to slow down decision-making in these areas and to signpost people to the best sources of guidance they can get are as strong as they humanly can be, because it is heartbreaking. I am sure your postbag is the same as mine, with people who write with absolutely heartrending stories of decisions they have made that have resulted in the loss of their life savings. One cannot ignore that. It has to be the centre of one's worry list.

Q83 **Ms Eagle:** Finally, Mr Rathi, do you have any views on the kind of regulation or supervision in this area that would minimise the capacity of these changes to cause the kind of damage that Mr Randell has just been talking about?

Nikhil Rathi: In this area, we are already becoming much more effective at requesting data, interrogating that data, developing a set of early warning alerts and signals from advisers, and pooling that with information held by the Pensions Regulator and other agencies. That is one approach. This is going to require a number of agencies to come together, share that information and data, and get in early.

Secondly, as with the Pension Wise question earlier, consumer education is incredibly important here. Ultimately, Parliament will set the framework, including on the pensions dashboard. I know it is being debated in Parliament as to whether the dashboard should be for information only or also for commercial use.

Q84 **Ms Eagle:** It is going to be for commercial use. That much is clear from our debates and the Government's position. Given that it is, and that it is going to have functionality to have transactions, what can be done from your point of view to try to minimise the risks?



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Nikhil Rathi: We will work with the Money and Pensions Service and the Pensions Regulator to make sure there is proper consumer education about the pensions dashboard and that that is available, and that firms offering commercial services, to the extent they are regulated by us, are following our principles of business when it comes to consumer protection, including treating customers fairly and not providing any misleading information. That is the starting point, but we are some time off before the dashboard arrives. These are things we will need to advance.

Charles Randell: This is part of a broader set of concerns that we have around consumer investments more generally. In our business plan this year, consumer investments is one of a very small number of priorities where we want to change the landscape radically. What we need to do in this area is to signpost consumers, or ensure that the system signposts consumers, much more clearly to simple and safe choices, and alerts them to when they are going off piste. There are, both in the accumulation and the decumulation phase of retirement, simple and safe choices that will fit the vast majority of people. We need to make sure it is absolutely clear when you are departing from those. Then the appropriate consumer education and support can be given to ask, "Do you really want to do this?"

Ms Eagle: That is very interesting. I am sure that the Committee will want to keep a very close eye on it as these things develop.

Chair: That brings us to the end of this session. Can I thank both Charles and Nikhil very much indeed for appearing before us, particularly Nikhil, because you have a huge job and you are not long into it? The fact that we have sought this session with you early during your tenure is indicative of the importance that we set by our scrutiny of the FCA as one of the more important organisations or authorities over which we have scrutiny.

It is also true to say, crudely, that there are two sets of issues that we have discussed today that we generally focus on with the FCA. There are the current and historical on the one hand. There are a large number of issues in that category, including mortgage prisoners, Premier FX, the levy that we discussed particularly around FSCS, pension scams, Pension Wise, savings and so on. We will intend to keep our foot very firmly on the floor on those kinds of issues, which, in many instances, involve a huge amount of human misery and suffering. It is our duty as a Committee to hold your feet and those of other organisations to the fire on those points.

The second category, which perhaps as a takeaway from this meeting you should bear in mind, is that we are particularly and growingly interested in the future and the challenges that are emerging. I would include here, for example, the new regulatory framework and the discussions we have had about post-Brexit challenges. They are now of particular interest to this Committee as well, so do keep in touch with us,



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not just on the business-as-usual stuff, if I might term it like that, but the future challenges as well. We want to hear from you, and as ahead of time as possible.

That brings me to the question as to why we are interested. There is a basic principle, it seems to me, with all these matters: the earlier you can get to the difficulties, the earlier you can understand things and intervene. Then a lot of trouble is saved further down the line. If you could bear that in mind in your dealings with the Committee, I would be very grateful. Once again, thank you very much indeed for attending today. My apologies that we had a Division that interrupted the session, but thank you very much for your time.