



HOUSE OF LORDS

Industry and Regulators Committee

Corrected oral evidence: UK regulators

Tuesday 24 October 2023

11.35 am

Watch the meeting

Members present: Lord Hollick (The Chair); Lord Agnew of Oulton; Baroness Bowles of Berkhamsted; Lord Burns; Viscount Chandos; Lord Clement-Jones; Lord Cromwell; Lord Gilbert of Panteg; Baroness McGregor-Smith; Baroness O'Grady of Upper Holloway; Baroness Taylor of Bolton.

Evidence Session No. 2

Heard in Public

Questions 13 – 20

Witnesses

[I](#): Lord Tyrie, former Chair, House of Commons Treasury Committee, and former Chair, Competition and Markets Authority; Charles Randell CBE, Senior Consultant, Slaughter and May and former Chair, Financial Conduct Authority.

Examination of Witnesses

Lord Tyrie and Charles Randell CBE.

Q13 The Chair: Good morning. For the second part of our session today, I am very pleased to welcome Lord Tyrie—Andrew—and Charles Randell. Lord Tyrie was the chair of the Treasury Select Committee and also chaired the Parliamentary Commission on Banking Standards after the great banking crisis of 2008. More recently, he was chair of the Competition and Markets Authority. Charles Randell is currently working with Slaughter and May. Before that, he was chair of the Financial Conduct Authority and a member of the Prudential Regulation Authority. Both of you are extremely well versed in and understand the world of regulation.

One question that we touched on in the last session, which you were listening to, was the quality of the people and particularly the ability to attract people who are prepared to tell truth to power and to tell the Government and the sponsoring department what needs to be done in the current situation. Do the remits that regulators have provide them with the clarity and, indeed, the encouragement to do that? If not, should they?

Lord Tyrie: In general, the fewer objectives, the better; otherwise, cherry-picking is inevitable. Indeed, that is what is going on. The CMA implements only half its statutory duties fully and is being given four more responsibilities. If you look carefully, although you need to pay attention, the Bank of England has some very clever people writing the material and it does not implement its secondary competition objective and does scarcely anything to secure it.

There is a second big problem out there on objectives, which was touched on by Gareth, which is the risk of overload. It is not just that the more we pile on, the more likely it is that the opportunity for cherry-picking will exist. It is also that regulators will fail to carry the burden that we are now asking of them. That has happened to the CMA. I have an ex-chairman of the FCA on my left, who happens to be an old friend of mine, and he will tell you whether I am right or wrong.

The Chair: Is he right or wrong?

Charles Randell: Speaking for financial services regulation, there has been a very recent debate about objectives in the context of the Financial Services and Markets Act 2023, with quite a strong wish to add to the primary objectives of the FCA. That was resisted, but the FCA has had its objectives added to, as has the PRA, with a competitiveness and growth objective and a requirement to have regard to achieving net zero.

Although I do not have any particular concern about either of those objectives as a public policy goal, we can get into an area where regulators are given a bunch of objectives, but the elephant in the room is the fact that the Government do not necessarily seem terribly co-ordinated in their approach to them. Where is the national growth plan and what is the Government's commitment to net zero? Dragging the

regulators in to give them an appropriate beating for failing to meet those two objectives when the Government are not necessarily all pointing in the same direction leads to quite a lot of dysfunction.

What you need when you have that kind of overarching objective, where the actions required go far beyond what the regulator can deliver, is some sort of national strategy within the context of which the regulators can see what their role is and the Government set out what they expect their role to be. For the FCA, the objectives that it has are balanced by the regulator in a relatively transparent way.

The Chair: Clarity from the Government or the sponsoring department is an essential ingredient. One of the things that surprised all of us in our journey through some of the infrastructure challenges has been the Treasury's lack of interest in certain aspects—for instance, the financial structure of the water industry that changed dramatically in the early 2000s. The level of gearing that was allowed in LDIs, according to a report that came out this week, has led to losses of more than 90% of LDI funds;¹ similarly, the failure to invest over two decades in the water industry. Should there be clearer direction from the Government on these matters? Should the Treasury take a closer interest in these matters?

Lord Tyrie: Yes to both, but we are close to motherhood and apple pie here. This is what we would like to have, but we are unlikely to reach it, at least for very long. It might help to think through some criteria for what should be delegated and what should be kept back. I could think of a couple immediately. One is where you are trying to distance politicians from decisions that would otherwise inevitably get entangled with the electoral cycle, the clearest example being monetary policy. Of course, that has become bedevilled by QE, which is a mixture of fiscal and monetary policy and has muddied the water.

A second criterion might be where there is a natural monopoly, or near natural monopoly, where state intervention is necessary, but where the disciplines of the market, properly applied, can none the less yield benefits. The sector regulators were created to do just that. Stephen Littlechild designed the framework.

Then there is the question of how much independence, once one has established that you do need to hand this to somebody with a measure of independence or distance from politicians. Particularly in the current climate, where there is widespread challenge to what one might call the free enterprise settlement after the collapse of communism—the settlement that was there 30 years ago, which is fragmenting a little—given that scale of challenge, you want independence to be at the minimum required to enable the body to perform its statutory functions.

I somewhat disagree with what I heard from Gareth a moment ago. It is possible to entrench much further the independence of regulators. For

¹ Clarification by the Chair: over 90% of defined benefit pension schemes saw asset bases reduced.

example, the Treasury Committee pressed vigorously and succeeded in obtaining a veto on the appointment and dismissal of the people running the OBR. As a result, they have shown themselves capable of speaking truth to power—perhaps not initially, but certainly after a period as they gathered the experience and self-confidence to do so. That is one route.

You can take it even further and go down a formal statutory route, as is the case for Gareth, who has protections as a C&AG. It did not stop Parliament removing a C&AG a while back, but it does give a measure of protection. We can devise a framework on the basis of which we consider independence each time we grant it or when we think that it is not functioning well.

Charles Randell: Just reverting to the question of whether people speak truth to power, I draw attention to the fact that, when I was chair of the FCA, it was fairly clear from public statements that I thought the Government were not doing enough in the area of high-risk investments, where quite a lot of the powers lie with them to change the rules, where I thought that the Government should act swiftly to bring buy now, pay later into regulation, and where I disagreed with the nature of the Government's plans to embrace speculative crypto. None of these was a popular thing to say. I believe them now as strongly as I believed them then, so there is no lack of speaking truth to power in that respect.

One of the problems of a lack of independence for financial regulators is the fact that we know from history that the influence of financial interests over Governments has been pervasive for centuries and has resulted in endless cycles of crisis. At the moment, we have a bit of a credibility problem in the strength and depth of some of the business interests that we see present in this place and in the House of Commons; the pervasiveness of all-party parliamentary groups with business funding and a variety of other groups pursuing a business agenda. My concern is that it is not obvious to me that there is a very clear voice for the consumer in all of this. Occasionally, some of the things that come out from Ministers look as though they have been written by lobbyists, and I do not see a huge engagement by many Ministers with the consumer interest.

Independent regulators can help to redress that balance. They can also slightly insulate financial regulation from the natural risks of the political economy, which obviously, in one sense, were what led to the financial crisis in the United States.

Q14 **Lord Cromwell:** On transparency again, what incentives do regulators have to call out their own performance failures?

Lord Tyrie: They have virtually none, so they will need to be prodded and there are half a dozen tools with which some prodding can take place. The biggest risk for them is, of course, ex post exposure of the mistakes, which is why ex post scrutiny of regulatory decisions is so important. If you are going to achieve any kind of measurement of these things, if you are going to use targets or try to develop regulatory impact

assessments, which are very complex and need your best people on the job to secure results, you need to underpin it with a level of transparency from Parliament and the Government that we do not, on the whole, have at the moment.

The reason we do not have it is that it is a very tough job and Parliament has a great deal to do. This is a great inquiry you are running, but you will move on to something else before too long.

A very long time ago, we used to have ad hoc scrutiny of whether government departments were spending their money properly. In the mid-19th century, a great reform was pushed through, and the NAO was created in 1866. Since then, we would all agree that there has been a step shift and improvement, and the current legislation that we have owes a great deal to what was done; in other words, what was decided then has stood the test of time .

We have reached the stage where we need something similar for regulators. Parliament can do something. It could be a much smaller body than the NAO, by the way, but a specialist body that has institutional memory and can ask intelligent questions.

Lord Cromwell: I am sorry to interrupt, but do you mean a “regulator of regulators” type of idea?

Lord Tyrie: Yes, a body in Parliament that is a scrutineer of regulators. Parliament could put this Committee, perhaps with some MPs—elected power needs to be here—on a permanent footing for just this job. The Government can and should do more. They have many incentives not to do more. After all, this is exposing things that may end up triggering electoral criticism of the Government. But there is a strong case for some kind of A-team right at the heart of government, probably in the Cabinet Office, not in the relevant sponsor departments, which often get captured or have an awkward relationship with the regulator, which is suboptimal for these purposes. This A-team would be capable of identifying issues and answerable directly to the Prime Minister.

I wrote this up for one of the previous Administrations as an idea, and I am happy to send you what I developed then. I have published extensively on the issue of parliamentary scrutiny.

There is a third tool. I cannot remember whether I said a handful or half a dozen, but let us do a couple more very quickly. The boards of regulators need a considerable shake-up. There is inevitable development of groupthink on boards. They are often drawn from people with very like-minded histories and profiles. Just touching on Charles’s point, which I so strongly agree with, the boards very often have only a small number, or nobody at all, who has direct professional experience of the end user or consumer of regulatory decisions. There needs to be far more of that.

Boards should be smaller, and there is a case for doing away with them altogether in the sector regulators. After all, we did not originally have boards. We had a director-general, and the director-general was a big public figure who stood or fell by the decisions that he or she took.

A moment ago, Chair, you were referring, I presume, to your report, *The Affluent and the Effluent*. The title is a fairly clear statement of the Committee's views of Ofwat. The first chairman of Ofwat was a man I knew well, Sir Ian Byatt. In fact, he was called director-general. This is the point that I am making. What did he do? He came in, he took a look, and quite quickly he said, "We need some radical changes here". The industry was extremely upset. Share prices collapsed for a while, and there was terrible political flak, but because he had the support of politicians, particularly senior people in the Government, he pressed home his case. That was the last major wave of investment that has taken place in the water industry.

I am not saying that we need directors-general. I am saying we have arrived at the point at which we need to start to consider radical internal reform. I will stop at my troika, because otherwise I will go on for too long.

Lord Cromwell: And otherwise my Chair will cut me off before I ask the second part of my question. Also, I would like to hear what Charles has to say. Just to lob in while we are transitioning, I am all for metrics, and preferably public metrics, but you cannot measure everything. It is very difficult. For example, we grappled with value for money for education with the Office for Students, with very little satisfactory outcome.

It is down to mechanisms of accountability, meeting these people and asking them questions. It is not just about metrics on the website, as was being suggested earlier. I do not know whether you have any thoughts on that, but let us go to Charles first and then come back to you if we have time.

Charles Randell: I would see this slightly differently from Andrew. Having been on the board of a regulator, I am not convinced that there was a period we can look back to with great nostalgia when everything was better and there were better people doing things. I am not convinced that balancing another turtle on the back of the enormous pile of turtles of accountability that the FCA already has would improve its performance.

What I tried to do when I was at the FCA was to move performance metrics away from metrics of activity that could well, in fact, indicate that things were going to go badly in the future, such as that authorisation applications were being approved very quickly—that is obviously not a great metric for predicting future success, except in the inverse—to metrics around things like how many consumers can get hold of affordable credit. It is really interesting that the political and business pressure for metrics is not really in that area; it is in the area of metrics for rubber-stamping things very quickly and not regulating things very hard.

Metrics are important, and during my time as chair I committed the FCA to producing an extensive suite of metrics that it is now grappling with. They are not very clearly in evidence at other regulators. Metrics are

important. The Government's support in making board appointments is really important, and it is really important that Parliament, either through the National Audit Office or otherwise, has access to the strength and depth of resources it needs not just to challenge the past failures, but to look at the future.

Q15 Lord Agnew of Oulton: I am interested, Lord Tyrie, in your own career, because you were a front-line politician for 20 years and then you took on the CMA, but even you, with all your experience, had to resign in frustration because you could not get the brute to do what you felt it needed to.

You put forward some suggestions, but you also mentioned motherhood and apple pie earlier, and I am just worried about some of the suggestions that you make, having been in the machine myself. You mentioned the Cabinet Office. I was a Cabinet Office Minister for two years. I was the public bodies Minister. I could not make the machine shift. Unless there is real buy-in from a Prime Minister and a Chancellor, locked in tandem, to tackle these things, we go round in circles.

Intellectually, I like the idea of a regulators' overseer to hold regulators to account, but they will work only if they are absolutely supported politically, and why would a Government do that when so often they are trying to cover up their own inadequacies?

Lord Tyrie: That was not a question; it was a statement, but it was one with which I more or less agree. I did make several of the points you have just made. I said that, if we did create something in the Cabinet Office, the body would have to be accountable directly, and have a direct line of communication, to the Prime Minister. Also, if it is created in tandem with a body that is given some serious expertise, such as a body of politicians in Parliament, there will, or could, be some creative tension.

I am not saying that an A-team, as I have called it for shorthand, is essential. I have said that there may be some benefits from it, and all your caveats, from my experience when I was at the Treasury and subsequently as a front-line politician and, as you say, a former chairman of a major regulator, lead me to say that there is a great deal in what you have just pointed out.

Lord Agnew of Oulton: I agree with you about reporting to the Prime Minister, but do you not feel there is an inequality of arms between the Prime Minister's Office and the Chancellor's office? The Chancellor has four or five Ministers who, albeit appointed by the Prime Minister, are essentially at the beck and call of the Chancellor, whereas the Prime Minister has nobody like that. You could say theoretically, "He has appointed 100 Ministers. Therefore, they are all reporting to him", but of course the reality does not deliver that. Would you consider my suggestion of having three or four Ministers in the Prime Minister's Office, so that one of those, a junior one, had the oversight, for example, of the body that you are suggesting?

Lord Tyrie: Going back to the initial caveats you raised, it is worth putting Ministers in there only if they are then backed up by No. 10 and No. 11. You are opening up a very big question about whether to have a Prime Minister's department and a heap of other issues.

I would happily come and give evidence on that for an hour, because it is a major subject, and I have worked in both buildings and seen it from the inside. All I would say on it now is that, when No. 10 and No. 11 are working in tandem, Governments function. When No. 11 is not supporting No. 10 in its major endeavours, there is trouble ahead and it is best to batten down the hatches. I do not think there is any way around that problem. It is a problem at the heart of the machinery of government if the Government alone try to do the job. That is why I have been advocating for some time that Parliament, among others, be given the tools to have a go.

Lord Agnew of Oulton: Charles, this is a similar question, again picking up on the point you made earlier about the inattention of the Government to some of these issues. How do we try to align the interests of the attention of the Government to this, relative to having more transparency and better oversight?

Charles Randell: There is a little bit that can be done through the machinery. Although the Department for Business and Trade has the joint appointment right over two of the members of the FCA board, my own experience was that the department or its predecessors had no further interest in or connection with the FCA's activities beyond that. The consumer brief, which is supposed to sit within that department, is not represented in the dialogue with the regulator. What is represented is the Treasury brief, and the Treasury, broadly speaking, faces off towards the financial services industry's interests, tax revenues, et cetera. You end up with a very lopsided sponsorship of a regulator such as the FCA.

What could you do about that through the machinery? As a former board member of government departments that got churned up through the machinery of government process, I have no illusions about how disruptive and costly they are, but it is worth thinking about having at least a Minister, if not a department, for fair competition and consumer protection, because that is a voice that is not sufficiently present in the Government at the moment.

Then there is the question that Andrew is directing his comments to: is it better to have the mechanism being a political mechanism controlled through the party of the day that is in power, through the Prime Minister's Office, or would it be better to give some additional resources to Parliament to play that role? I am rather more cynical than Andrew is about the motives that the Government of the day will have at any given time. It is natural for the Government of the day to be very accessible to large business interests. We are seeing that at the moment with some of the debates around the way in which the regulation of technology should be enforced, and those sorts of issues match up pretty well with what you

see in ministerial diaries in terms of meetings. I am very cynical about that approach. That will not lead to a good result.

When you look at the root cause of a lot of regulatory failure, it has a lot of political fingerprints on it. Why is the water industry in the shape that it is in? Obviously, poor regulation is part of the story, but the political thrust is to keep bills low, and that results in chronic underinvestment. Why did we end up with the mess that we ended up with in the energy industry? It was because politicians really liked the idea that there were lots of market entrants and suppliers, and the fact that they were all basically buying a one-way option was overlooked. I do not think the answer lies in giving central government more control over these issues than already exists.

Q16 Baroness O'Grady of Upper Holloway: Good afternoon. I do not want to repeat some of the territory that we have already covered, but I want to press a little on what regulators themselves could do to open themselves to more scrutiny and accountability. In particular, I wanted to pick up on Charles's initial mention of the ever-present risk of capture or chilling of regulators' activities, and the risk of an imbalance of voices that regulators are listening to, not just in terms of consumers. In a number of industries, we have seen that the workforce has been raising the alert and has not necessarily been heard in a consistent way, or some would argue that it has not been heard, by the regulator.

Is there any more thinking about that risk of not necessarily conscious capture, but the failure to listen to other voices, and what regulators could do in practical terms to make sure that those other voices are heard?

Charles Randell: First, I will address the FCA and its engagement with its own staff, which is done through a staff consultative committee that now includes representatives of two unions. I regularly engaged with the staff consultative committee.

I am well aware that the workforce changes that the FCA introduced were not popular with the union representatives at the FCA, but one of the things that we need to focus on, and which I fear that the NAO possibly does not have the skills to focus on, is the sheer scale of operational transformation that is needed in our public sector, and the fact that we will achieve that not by throwing more bodies against the wall but by major investment in systems and processes and re-engineering of what we do.

One of the root causes of the FCA's challenges was chronic underinvestment for decades, going back to the FSA, in technology. This was exacerbated when the FCA's workload was doubled by the transfer of consumer credit firms to the FCA, with a strong ministerial steer that there should be no increase in fees to match that.

Quite often, the problem is that it is very difficult to re-engineer services within a public sector context. At the FCA, the re-engineering of its processes and systems produces higher-quality jobs. There are now

something like 700 or 1,000 more people working at the FCA than there were when I started there. You may think that is a good thing or a bad thing, but I can assure you that they are all doing important work.

Yes, the employee voice is very important. If we look at the question of the different regulators, the FCA has many mechanisms for getting advice: from its consumer panel; it has a consumer network; it has a national outreach programme. I went to every nation and many of the regions to hear diverse voices and needs, and I prioritised that. When I appeared before the Treasury Committee, I said that I would meet all the consumer groups before I met a single business, and that is really important. It is the way in which the senior leaders face off towards the users of the ultimate regulated service.

One other thing that I think is a problem is the question of appointments to boards, and whether Governments seek to pack the boards of regulators with their political allies or people who have a particular worldview. I would add an additional dimension, and that is the diversity dimension. Certainly, if you look at the FCA, we are facing some really complex intergenerational problems, so we should be looking at not just gender and ethnicity but age. Where are the renters on the FCA board? Where are the people who face no prospect of being able to buy their own home? Those sorts of diversity metrics need to be thought about as well.

Q17 **Baroness McGregor-Smith:** Moving on to some of the high-profile failures we have seen over many years, it strikes me that there are some quite big cross-cutting issues for regulators, such as funding within the water industry or within universities, which are really challenging. Then we go on to other areas, such as the complete failure of procurement processes in a pandemic.

Is there a better way to structure the way that regulators work, bearing in mind some of the failures we have seen on big cross-cutting issues? We can talk about the water regulators, but that is also a big Treasury issue in terms of where the expertise comes from. Is there also a danger now, as we spend more and more time with more and more people working in the regulators, and they are drowned in all the day work, that they miss some of these big cross-cutting issues?

If you look at the government risk register, it was pretty obvious for many what has been on there, but we still have not dealt with the water challenges. Are the processes within Ofwat adequate for what is coming? I am interested in whether you think we should change the way that regulators work, as opposed to just continuing to say, "We will keep funding them. We will keep operating the same processes with Parliament", because if all these things worked, we would not have had the failures we had.

Lord Tyrie: For the time being, we should try to make the existing system work better. There is an alternative approach that happens every 30 years or so—maybe it is due, although, on balance, I think it is not—

whereby we have to tear up the shape of our regulatory framework and think of something fundamentally different.

Cross-cutting regulation is an enduring problem. Each institution protects its own back by looking at its statutory objectives. It is natural—indeed, right—that it should, but if the structure is not right, it can often lead to chronic underlap. We saw that with the tripartite arrangements prior to the crash for the management of systemic risk, and on a huge scale. That is the biggest example we have had in the last 30 years.

I would try to make the existing system work better. Boards can be made more functional and less vulnerable to groupthink, which is rife at the moment, through some of the thoughts that Charles was referring to. We need much more diverse boards that represent the end user far more, and, as he pointed out, one of the groups of end users will be young people.

In one of your recent reports you have recommended individual responsibility at the top of the regulated companies, but what about individual responsibility at the top of boards for some of their decisions? It seems to me that, if regulators have the capacity to strike someone off as unfit to be a director, and that can be applied alongside individual responsibility for particular functions, that can and should be applied in parts of the regulated sector.

Baroness McGregor-Smith: With the advent of more digital transformation and AI, is it right that we run it the same way? No regulator has the money to even think about how to invest heavily in that, because there are not the budgets available. Is it time to say, “The world we are going to be working in over the next 30 years is going to be fundamentally different from the world we have worked in for the last 30 years”? There have been a number of cross-cutting issues that need to be addressed. Is now not the time to address them?

Lord Tyrie: Some people are recommending that. Dieter Helm has recommended a fundamental restructuring of parts of sector regulation. John Penrose has recommended, although he rowed back from it recently, having a mega-regulator that can therefore internalise the cross-cutting issues to which you referred earlier, but I hope we can avoid the huge disruption that some of these things will cause. What worries me about another fundamental reorganisation, such as we had when privatisation took place, is that we end up with five to 10 years of dislocation while everybody works out what they are now supposed to be doing in a new environment.

As for finding out what is really going on, which we have not touched on enough, although we discussed transparency earlier, there are other tools available. You could ask for the release of valedictory notes. I wrote valedictory notes for my successor at the CMA. I do not know whether Charles did, but you could ask to see them. They will give you an insight into what went on. Parts of them may need to remain privy to yourselves.

You can decide for yourselves what you think should need to be published.

You have the power now, but particularly if we create a new, more powerful body under Standing Orders, to embed highly skilled, qualified people in regulators to keep an eye on what is going on. That is how we found out what the regulator, the FSA, was doing, during the run-up to the financial crisis, both on HBOS and RBS. The regulator published one-page summaries of what it thought was going wrong. As a Treasury Committee, we said, "That is not good enough". We set a precedent by appointing two very senior people to go into the building with full parliamentary powers to see any person and any paper, and they did exactly that.

When the Court of the Bank of England seemed to be failing, we sent in somebody to examine the Court's minutes, and they went through them meticulously, going back several years. These powers already exist, but they are not used. Some systemisation of those powers is certainly worth a try before we go for fundamental reconstruction of the regulatory environment.

Charles Randell: There are enormous differences between the regulators that have taxing powers and those that do not. The FCA and the PRA are able to levy the industry for their costs, and although there are huge political and other pressures to try to keep those bills as low as possible, at least they have a measure of autonomy in raising the budget that they need to do the work. When you contrast that with what has happened at, say, the Gambling Commission or the Environment Agency, you see a process through which central government can, in effect, starve the regulator of the resources it needs to do the job. That is a fundamental problem for some of the regulators.

On the digital challenge, I would just highlight the Digital Regulation Cooperation Forum, which brings together the principal regulators that are most concerned about digital regulation, including AI. That includes the FCA. I believe that, for the time being, that is a good forum in which to try to drive best practice in that group.

I have questions about whether learnings from one sector are transferred to another sector with the speed that they need to be. Let us take the financial sector. We saw the benefits of stress testing the finance sector with unexpected but plausible scenarios, and that has undoubtedly strengthened aspects of our financial sector enormously, but it was not done in energy. No one said, "What if the price goes up in a way that is unexpected but plausible? How will that feed through the corporate structures that we have licensed? Will we end up with the sort of Bulb Energy outcome that we have?" Similarly, where is the measurement of outcomes in environmental performance by water and sewerage licence-holders?

There are plenty of areas where best practice is transferable. The question is whose job it is to make sure that happens. That could be an

area in which Parliament, supported by the right kind of advice and resources, could be the grit in the oyster.

Q18 Baroness Bowles of Berkhamsted: Before I proceed to my question, I ought to declare my interest as being regulated by the FCA as a non-executive director of the London Stock Exchange.

Also, before I proceed to my question, which is about regulators co-operating with one another, one of the elephants in the room that we have not addressed is the electorate as consumer. We have dealt with the capture by industry of government, but Parliament is different from government, and there are quite a lot of things Parliament raises that are different from government. The electorate are quite a powerful influence; for example, in wanting to keep down bills, which has knocked on into regulators and other problems. I am just tossing that out as a think point.

My question is: are the roles and remits of different regulators sufficiently discrete, or is there overlap and underlap in their responsibilities in areas where that is relevant? I will go straight on to the supplementary, so you can incorporate that as well. How effectively do regulators co-operate with one another, and how could this be improved? Again, the stress-test example that Charles has mentioned is somewhere that this Committee itself went when looking at other regulators as well, saying, "Where is the stress testing?" Should there be more of that?

Is there a forum where regulators that are not really connected could still share best practice? All the infrastructure regulators have similar problems. Whether it is water or energy, they have not built the infrastructure because of price controls and so forth.

Charles Randell: I agree that there are many cross-cutting issues where the regulators need to do as much as they can to pool their knowledge and to co-ordinate their approach. Within the financial regulators, there is the overarching oversight of the Financial Policy Committee, which looks at financial stability questions and challenges both the bank and insurance company regulator and the FCA to address systemic issues. That is a good structure, but it is a structure that is still maturing and has a way to go. You see that in this Committee's report on the LDI question. You also see it in other areas of the regulation of leverage across markets, where there is more to do.

There are other cross-cutting issues too. One that most urgently needs attention is the issue of fraud and other types of financial crime, where there are many different agencies involved, including the police forces, the National Crime Agency, and so forth. Again, there is a mismatch between the challenge and the resources that are applied to that, even to the extent that the Government, when they talk about crime figures, have decided to drop fraud because it is too high. Something definitely needs to be done to ensure that that, as a cross-cutting issue, is working better.

The same will be true of future digital challenges, including the impact of AI on the fraud issue and a whole load of other issues, including financial stability, and then the pervasive risks of the dehumanisation of the provision of services, with the biases and the exclusion that that can lead to. There are plenty of issues. The question is what the right forum is in which to do this. More needs to be done to strengthen some of the existing forums, and there are areas where some new forums need to be created. There could perhaps be more formality, more resources and more transparency about their activities than there is at the moment.

Lord Tyrie: There is a very great deal in your question, and I agree with a great deal that has been said by Charles. Quickly moving to points that might be tacked on, it is the NAO that goes into all these bodies, and it should be the best single repository of advice on cross-cutting issues. It does not always have that at the top of its agenda, and, frankly, it does not always send its best people in to do the work in the regulators. After all, if you want to make a career at the top of the NAO, you really want to get into defence and health and these other exciting subjects, rather than find yourself looking at the Office for Students. I do not mean that at all disparagingly of that important regulator. I just point out how the mid-ranking NAO staffer will see it.

Placing a greater obligation on the NAO one way or another might yield something, but when we talk about who is representing the consumer—this has come back time and again—we around this table should be representing the consumer. I am no longer elected, and maybe there is a case for election, but the elected representatives should be doing the heavy lifting on that. Board non-executives are appointed by government to represent the end user. I have been saying today—there are a number of others who agree with me—that boards have not always done their job as effectively as they should. Groupthink was rife before the crash.

Connecting this point to the earlier point about metrics, almost the first question I asked when I arrived at the CMA was about whether levels of competition in this country were going up, going down or stable. I was told, “There are no metrics for that. We do not measure it and it is a complete waste of time to try”. I pressed this in various ways, and I eventually decided to take it to the board, where I could not get a board agreement to go ahead. The chief executive was dead opposed. Again, back to the point about capture, the board had largely been captured by the chief executive, so things get a bit tougher at that point.

Once one has found out whether competition levels are going up or down, one can then start examining why and where policy and strategy of the institution might need better to focus, rather than leaving a shopping list to be produced by an anonymous body, which is just about the most powerful of all in the CMA, called the pipeline steering group, to whom my predecessor had delegated responsibility for taking decisions on which projects or cases to initiate.

There is a lot that can be done if you embed someone in these institutions to find out what we do not really know at the moment.

Nobody knew about the pipeline steering group until I put a reference to it in the published minutes. There was no reference online at all, but in one sense it is the most powerful body. Certainly, there is a case for the point that I have made.

I just want to mention something else. We have not discussed consumer empowerment at all. At the moment, consumers are completely disempowered. The consequence is a collapse of confidence in capitalism, a belief that people are subject to a rip-off culture and that the economy is run for others and not for them. This is all very perilous territory for those of us who believe, broadly speaking, that the free enterprise settlement that we developed over the last 30 or 40 years is the right one, or at least is the one with the best prospect of delivering material welfare. Certainly, I do.

How can we empower consumers more? It is a very difficult problem, and I also examined that when I was at the CMA. I got some co-operation near the top, and some ideas were worked up, at least to some degree. You might ask for those. It means some reform to the 2015 consumer legislation, and a number of other changes.

There are risks, because you may end up imposing unacceptable burdens on businesses, which would then be plagued by small cases. You have to watch very carefully how you handle the scope for class actions, which could end up as vexatious operations by alert lawyers. The whole area is fraught with problems, but that is one reason why it has not been done. Greater consumer empowerment would take us some way to closing the gap, which I think you were referring to, between the electorate and these anonymous bodies.

Charles Randell: Could I come back on the consumer empowerment point? I agree with Andrew that we should empower consumers as much as we can. Looking at the actions of the FCA, it has quite controversially introduced a new consumer duty, which will require financial services businesses to be much more transparent about the value that their products provide, and to provide information and support to consumers, and there is redress. Consumers can take complaints to the Financial Ombudsman Service, so there is an empowerment there for them.

Of course, the empowerment exists for those who can access products. For those who cannot access products at all, there is no empowerment. One of the issues that regulators cannot address, and that politics has to address, is the very fundamental distributional set of questions that arise when people are excluded from various services. For example, in energy, should there be a social tariff that goes broader than, for example, people with disabilities? Should there be, in due course, some examination of whether that kind of principle should exist for compulsory insurances, such as car insurance? People cannot choose not to live in a high-crime area, but they may not be able to get insurance.

There are a bunch of distributional questions that arise for a section of the population for whom any amount of empowerment currently will do

them no good whatever, and those have to be solved through the political system. They cannot be solved by regulators. Regulators do not have the democratic legitimacy to take those sorts of decisions.

Lord Tyrie: I agree with all that, of course. To its credit, Parliament identified the huge information asymmetry in financial products early on, and that is why we have a financial ombudsman.

Baroness Bowles of Berkhamsted: The consumer duty has been mentioned. That of course derives from Parliament wanting a duty of care and, in a sense, it was bought off in terms of the FCA doing the consumer duty, which differs slightly from what Parliament intended, because Parliament wanted there to have to be some thought about whether consumers were being treated correctly, rather than it being another tick-box exercise. I just leave that thought there: that ticking boxes is where the duty of care or the consumer duty has gone. As I said, the regulatory tick boxes mean that it just goes to compliance, and the person who is doing it is not doing the thinking. That is the thought that those of us pursuing that have in our minds.

Charles Randell: For the record, I do not agree with that at all. You can see from the actions of the FCA in the early days of the consumer duty that it is grappling with a bunch of issues where firms are having to fundamentally change what they offer their consumers. I do not see anybody in the financial services industry treating this as a tick-box exercise. It is leading to a fundamental change in the way that products are priced and the kinds of information requirements that consumers are given. In some cases, it will put businesses out of business, and rightly so. I do not agree with that, and I thought it was worth putting that on the record.

Q19 **Lord Clement-Jones:** Do any of the UK's international comparators address these issues particularly well? What lessons could the UK learn from other jurisdictions in these areas? You heard what Gareth Davies had to say. He did not think there was any particular country that could do that, but there were one or two areas. I wonder, starting with you, Andrew, whether, for instance, there was anywhere that had a particularly high degree of parliamentary scrutiny, or for you, Charles, whether there was somebody who was particularly effective or had the skills, or whether either of you had ideas about good models.

Lord Tyrie: All countries develop forms of scrutiny that are consistent with their culture and history. The Bundeskartellamt has a very high degree of independence. I will not go through its history, but it also has a very high level of accountability to the Bundestag.

I would like to step back a bit and make two points on international comparators. I have been talking about the free enterprise settlement, which is now widely challenged, both by populist nationalism from the right, and occasionally from interventionist socialism on the left. This is going on everywhere, much more widely than just in the UK, and it includes aspects of the regulatory framework. We have seen it surfacing

in QE and in the whole issue of the extent to which mergers and acquisitions, for example, should be left in the hands of regulators.

These issues are being discussed all the time in international forums such as the OECD and the Washington institutions. Several top regulators are deep into this subject and are thinking about it, as some people around this table are. Vestager, although her term is coming to an end, has made a number of speeches about this, and has tried to alter the way that the EU scrutinises platforms, and to some effect.

I do not know whether you have heard of Lina Khan in the US. She is one of the most powerful people in the world in this field, and is transforming the work of the Federal Trade Commission. A lot of people are trying to work out where the new stable resting place is going to be as a consequence of these challenges—fundamental challenges, in some respects—to the framework that we have had in place.

The second point I want to make is that we are doing our best here in the UK; you are doing your best right now, and you are going to be producing a report on this. But the UK is very poorly represented on the key institutions where these debates are taking place. We have virtually nobody at a senior level in the IMF, the World Bank, the OECD or the WTO. We have a lot of people at a senior level doing human rights-type jobs in UN institutions and other Washington institutions. We do not have that on what one might call hard economic subjects, which is extremely curious. We have not had it for a long time. This is very curious when you consider what expertise we have as a consequence of our large financial sector. We need to do something about our international representation.

As a rider to that, whatever we do, we must not carry on sending senior officials. Senior officials have spent a lifetime waiting to find out what they are supposed to be doing and then going and doing it, interfering with it at the margin. What you need is people who understand the internal politics of these bodies, and who therefore are capable of influencing their direction at a strategic level. They will be very influential in helping to reshape what one might call a new global economic order, which is going to be developed as a consequence of the fragmentation of parts of what we have now, and the whole debate that we have been having today is really a subset of this massive problem.

Charles Randell: I can speak only for the financial services sector in this area. First, when we were a member of the European Union, the UK's contribution to European regulation was seen by other member states as extremely valuable and high-quality. Curiously, many people in member states want to try to keep the dialogue as active as they possibly can.

Secondly, the UK is a big player in a couple of the key international bodies in the world of financial regulation: the Financial Stability Board and IOSCO, the International Organization of Securities Commissions. The UK certainly punches at or above its weight in those areas.

It is sometimes tempting to look at other countries and say, "They have this structure or that structure, and therefore we should have the same", without taking full account of just how different the circumstances are. In Germany, for example, the relationship between consumers and their bank is very different. The degree of care that banks give their consumers when selling them a wide variety of products is very different. There is also a very different savings culture.

In the United States, there is an enormous Tower of Babel of regulators, but there is also a private litigation culture, which helps to constrain some of the worst excesses that are visible in various different industries. It is dangerous to take just one aspect of those and say, "That is transferable". They are all different.

There is often a lot of discussion about bringing Singapore-style regulation to the UK, but in Singapore you are dealing with a demographic and a level of financial awareness and capability in an educated population that are very different from what you will find in many parts of the United Kingdom. You need to design something that is fit for purpose here, and I am afraid there is nothing that is readily importable that I am aware of.

Q20 The Chair: The theme that has been running through this whole discussion and the previous session is the quality of the people who head up these organisations. Both of you have headed up these organisations and left these organisations. The NAO raised the question of pay and rations, but it seems to me that there is a more fundamental question about whether the powers of the chair or leader of the regulator can change the culture. Both of you have experience of that. Do you have any tips about how we can attract and retain better people who can take this forward?

Charles Randell: I left the FCA after a very intensive four years, which spanned our exit from the European Union and the Covid-19 crisis, and involved responding to numerous independent reviews of past failures by the predecessor regulator, the FSA, and in the early years of the FCA, and wholesale change of the management and the board. I was confident, at the point I left, that the organisation was in good hands, and had very strong executives and a radical programme to transform how it performed operationally.

It had always been seen as an organisation that had a strong analytical capability, but the operational performance of regulators is very often what lets them down, and that is the area that I focused on. I was pleased to leave a valedictory note, as indeed I had to, because we applied to ourselves the senior managers regime that Andrew was instrumental in designing for financial services firms. We applied that regime to ourselves, and one of the requirements is that you leave a valedictory note for your successor and that there is a proper handover process.

It is a mistake to think that you attract the best people into regulation through pay and that you need to benchmark yourself entirely against the private sector. There are generations of people coming through, particularly now, who want a sense of social purpose in what they are doing and who, even with the best qualifications, are not interested in going and working for an investment bank or a management consultancy. They want to come and do the sort of work that regulators do, so I am very optimistic about the ability of regulators to continue to attract first-rate people if they look in the right places and empower them to do the job that they need. The empowerment is really important.

Lord Tyrie: I agree very strongly with the last point. On the whole, we were fortunate in that we were both heading up a couple of high-quality regulators. We were both, on the whole, interacting with top-flight people who were very highly motivated.

I would say, though, that most of the people who head these bodies have not developed the skills required to transform themselves, to some degree, into public figures, and to handle, for example, adversarial Select Committee inquiries and the whole panoply of what is required to explain to a much wider audience what the purposes of the organisation are. That generates a timidity right at the top, and a reluctance to take many of the risks that those just below the top, and often throughout the organisation, have identified as things that they think need attention.

We need to release the energies of the best. How do you do that? I have made a number of suggestions. We live in the world of second-best with regulators. They are not subject to a profit motive, so we have to find proxy measures of their success. I have made a number of suggestions for how that alignment can be accomplished, but the need to maintain and improve that alignment of interests is right at the heart of any report you write, because it is only natural otherwise that the people right at the top will react in the way they do at crucial points.

I will just end with one very last point. Unless a body like this Committee explains what is wrong in some detail, there will be a lot of people, particularly in Whitehall, saying, "Do we really need to do much more than the odd tweak?", so it is important that the Committee reflect on whether we really do have a serious problem with a number of our regulators, or whether there is no more than a tweak required, plus perhaps some work on the deep dives you have done into water and tertiary education.

The Chair: Thank you. I see a lot of nods around the table, so I think you have made your point very well. Thank you very much for an interesting and important session. Charles, thank you for the note that you sent in advance. You may wish to redraft it in the light of some of the questions and the points you have made, but we very much welcome it as evidence for the Committee. Thank you both very much.