HOUSE OF LORDS

# Financial Services Regulation Committee

## Corrected oral evidence: FCA enforcement guidance consultation

Wednesday 13 November 2024

10.15 am

Watch the meeting

Members present: Lord Forsyth of Drumlean (The Chair); Baroness Bowles of Berkhamsted; Baroness Donaghy; Lord Eatwell; Lord Grabiner; Lord Hill of Oareford; Lord Hollick; Lord Kestenbaum; Lord Lilley; Baroness Noakes; Lord Sharkey; Lord Smith of Kelvin; Lord Vaux of Harrowden.

Evidence Session No. 1 Heard in Public Questions 1 – 9

### Witnesses

I: Ashley Alder, Chair, Financial Conduct Authority (FCA); Nikhil Rathi, Chief Executive, Financial Conduct Authority (FCA).

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

# Examination of witnesses

Ashley Alder and Nikhil Rathi.

Q1 **The Chair:** Good morning and welcome, Ashley Alder and Nikhil Rathi, to this session of the committee which is to consider what has colloquially been described as a naming and shaming initiative. Nikhil, you sent me a letter about motor commissions at 7.50 this morning. Although you suggested that the committee might want to ask some questions about your letter, it is very difficult to do so with this kind of notice, so we will be asking you to come back shortly to consider what is a very important issue for the market.

On the main subject of our inquiry today, could I just begin by asking you, Ashley, as chairman, how you would rate the handling of this issue and the consultation process?

***Ashley Alder:*** Would it be useful if I describe, as briefly as possible, how the board has approached this over the last year or so? That will certainly be a component of it.

**The Chair:** We have a number of questions so it would be good if you could just deal with that question directly.

***Ashley Alder:*** Frankly, when the board first looked at this in October last year—in the context of a broader discussion about quite a major reset in the way in which we approach enforcement within the organisation—it was anchored around two areas: increased pace and increased focus. That was the broader context. The proposal around increasing frequency of naming firms subject to investigation was a part of that. We looked at it again in January of this year and agreed that the potential benefits of this proposal would certainly be appropriate for a consultation.

In coming to your point, the consultation went out after the January board and, in May, post the consultation period, we reflected with the executive on a particularly strong reaction from industry, which I think everyone will be aware of. It was interesting because we frequently experience strong reactions from various viewpoints to consultations we put out. I found some aspects of the reaction a little surprising—for example, raising questions about whether this, if we proceeded, would affect financial stability. There were questions about potential bank runs and such like. Nevertheless, it was a strong reaction.

To your point about how it was handled, all within the organisation acknowledged that it could have been trailed a bit better beforehand. It did not appear in the regulatory grid, which is the place in which forthcoming consultations and proposals are normally positioned. The consultation was interpreted by many as if the organisation was proposing to name in all or even most cases, which certainly was not the case. Actually, there was a degree of miscommunication as we were moving from very rarely to sometimes; the question then was how we articulate what we mean by sometimes.

**The Chair:** Would a good summary be that this was not your finest hour?

***Ashley Alder:*** We have had many fine hours and finest hours, but the way in which it was communicated and how that then played into the reaction were probably not.

Q2 **The Chair:** Nikhil, we are looking at the evidence which has been published; I am sure you will have seen it and been briefed on it. In the market, there is almost universal hostility to this. There has been a kind of iterative protest where you have adjusted what was originally suggested but might it not have been more sensible to have taken this committee's advice in April and paused any further action until we had had a chance to look at the evidence? We will report next month, but I cannot imagine that the responses which you have had from the market are very different, and I wondered if you might be able to share a summary of them with the committee so that we are sure we are treating everyone fairly.

***Nikhil Rathi:*** Thank you, Lord Chair. Just briefly on the motor finance matter—

**The Chair:** No, I do not want you to talk about motor finance.

***Nikhil Rathi:*** I was just going to say that I am very happy to come back and give evidence at the appropriate time.

**The Chair:** We need to respond to your letter.

***Nikhil Rathi:*** Of course, and we wanted to give you notice as early as we possibly could of a consultation that is coming at very short notice, in the next couple of days, in line with the new framework. It had to go out by 8 am before markets opened because the board took the decision yesterday.

**The Chair:** I understand.

***Nikhil Rathi:*** As Ashley said, we clearly could have trailed this more. I said quite openly, at the Mansion House regulators' dinner with all the industry representatives there, that on this we fell short of our predictability test and we could have better explained some of the drivers of the proposals. You have obviously received responses from industry, consumer groups and some whistleblowing campaign groups, that articulate some of the feedback that we have received. We also know there were a range of views in Parliament and, before the election, the Treasury Committee was asking us questions about this and will, no doubt, want to return to it now it has been reconstituted.

Obviously, we need to make sure that something like this is not repeated and for me, as chief executive, I take responsibility for everything the organisation does in terms of our relationship and my relationship with regulated firms. What is important for us is that, when a situation like this arises, we make sure that we are out there engaging, listening and explaining what we are doing, including at the most senior levels of

organisations, so that firms can have confidence in our policy work and enforcement process.

Since the consultation closed, we have had quite literally hundreds of engagement discussions, sometimes as part of our normal course of engagement, sometimes specifically with trade bodies and other representatives, to work through what the concerns are and explain where we are coming from on this. No decisions have been taken and no decisions will be taken on this until the first quarter of next year. Obviously, we hope that gives us time to hear the advice of this committee and the advice of the Treasury Committee, once it has looked at the matter having been reconstituted, and then take things from there.

**Lord Hill of Oareford:** On this question of consultation, the chairman said that it failed to make it into the regulatory grid, which was part of people being caught by surprise. Did you discuss it with the Treasury before you unveiled it to the world? I have seen the response from Treasury Ministers of both parties before and since, so was the Treasury also blindsided?

***Nikhil Rathi:*** Ordinarily on operational enforcement matters, we would not talk about specific details with the Treasury. We had mentioned that we were looking at the questions around enforcement and transparency, but we did not share the consultation document in detail in advance. We would not normally do so. However, I can assure you, Lord Hill, notwithstanding the comments of the previous Chancellor but also Ministers that have taken office since the election, that we are in detailed discussion with the Treasury. It has a responsibility for the overall system. It is obviously one of the bodies to which we are accountable, as well as to this committee and others. As we take this forward, I certainly do not want to be offside with the key partners to whom we are accountable, nor do I want to be offside with industry.

I also want to make sure that it is understood what some motivators of this were. For example, the previous Chancellor wrote to me in public asking me to disclose investigations into debanking, and I was unable to do so at that time because the framework did not allow me to. Sometimes the drivers for asking us for more transparency have come from the Treasury itself or, indeed, from Parliament—be that the Public Accounts Committee, the Treasury Committee or individual MPs. Opening that conversation with them has been important and, as we come back and as we think about how we may respond to the broad feedback we received, I hope we can build more of a consensus than we were able to do in the first round.

**Lord Grabiner:** Can I ask you about the mechanics of the commencement of an investigation? When the investigation begins, it is right, is it not, that you have access to everything: board minutes, board papers, audit and accounting advice and, indeed, legal advice as well? You have access to all that material, do you not?

***Nikhil Rathi:*** It depends on the type of investigation. If I focus on the area that is most contentious in the context of this consultation, it is about regulated and listed firms. Typically, unless something very dramatic has happened, most of those investigations will have followed a year to two years of supervisory work.

**Lord Grabiner:** In the course of that supervising process, is it fair to say that you would have had access to a lot of material?

***Nikhil Rathi:*** Typically, we would have had access and I can talk about some specific cases because they are now public. If I take the recent investigation into the money laundering controls at Starling Bank, there was access to their regulatory reporting data. We commissioned an independent expert to look at their work. They came back with some issues; we agreed a voluntary requirement with them. Yes, we had access to all the papers; we had access to board minutes, but not always legal advice because that is protected by legal professional privilege.

**Lord Grabiner:** Does that include legal advice in respect of the matter that you are investigating?

***Nikhil Rathi:*** Typically, we do not seek access to legal advice into the matter we are investigating, but we will have access to audit committee papers, we will have access to board and executive materials and, of course, we can commission independent experts to give us an independent view as we did in that case as well.

**Lord Grabiner:** Forgive me interrupting because I want to come to that point in due course. Is it also true that, typically, investigations are taking nearly four years?

***Nikhil Rathi:*** That is one key part of it overall.

**Lord Grabiner:** That is a yes or a no, is it not?

***Nikhil Rathi:*** Historically, 42 months—it is coming down fast. If you look at the investigations we have opened since 2023-24, a number are now completed in 13, 14, 15 or 16 months. We have brought down the number of operations from 210 to 150, so that partly explains why there was no further action. Those numbers are now coming down very fast.

**Lord Grabiner:** We have also been told that something like two-thirds of the investigations that you commence produce no action. Is that correct?

***Nikhil Rathi:*** Historically, that is correct. That has now come down to around 56%. We are making good progress with the new plan and would expect that to come down to around a third. Bear in mind the breadth of our investigations. I talked about the regulated firms; we also deal with unregulated firms, so fraud, scams, and other intelligence-led investigations, and serious organised crime investigations as well.

**Lord Grabiner:** In a nutshell, why do you feel the need to publicise an investigation at the commencement of the exercise? Can we have a short

answer?

***Nikhil Rathi:*** We have a regulatory principle in FSMA that requires us to exercise our functions as transparently as possible. Our professional judgment has been that, in certain cases, with hindsight, when we have looked at the course of an investigation, we feel we could have delivered our primary objectives better than we did by staying silent. That was specifically called out by the Public Accounts Committee in 2022 in the context of British Steel where it made a specific recommendation to us and asked why we had not said more about advisers who had been giving rogue financial advice. We sometimes work with regulatory partners. Recently, we took a fine against PwC for failing to report to us when it suspected fraud in an audit. Our partner, the FRC, opened an investigation into the quality of the audit. The FRC announced but we said nothing until the end of the investigation.

**Lord Grabiner:** I understand. Forgive me interrupting, but I want to come to a rather more important point. Is one of the reasons you make the announcement because you are looking for the possibility of a whistleblower or a disaffected employee to bolster your evidence?

***Nikhil Rathi:*** That might be one factor in certain cases. We conducted and published a whistleblower survey. It was very critical of the FCA because it felt that we were silent with whistleblowers. Whistleblowers come to us with information, and then we say we are taking information very seriously and are looking at it. However, we do not tell them whether we are investigating or not. The feedback—I think you have heard from Protect as well—in one response was that that impeded whistleblower confidence in the system.

Other jurisdictions, such as the US, pay whistleblowers; we do not do that in the UK. In selected cases, witnesses may be a factor. For example, there was a case where we did supervisory work. It was a fraud case that a regulated firm was allegedly involved in. In the end, we did not take that case, although we could have done. It was so complex the Serious Fraud Office decided to take it. We did the preparatory work; the Serious Fraud Office announced the investigation. It issued a structured questionnaire for any consumer who had been affected by that fraud to share information with the Serious Fraud Office. That structured questionnaire was responded to; that matter is now before the criminal courts.

**Lord Grabiner:** My concern is that, when you decide to initiate the investigation, you may not actually have much in the form of evidence, and that the reason you disclose the investigation publicly is in the hope that you will get some evidence to justify your action. That is a concern that has been expressed to us, and I have that concern as well, because there is a sort of smack of unfairness about the process, especially if, as we know and I think you accept, two-thirds of the investigations that you instigate come to nothing.

***Nikhil Rathi:*** As I say, across the entire portfolio of investigations, including unregulated firms, we are aiming to bring that down steadily over time. It is already coming down to just over a third. There is one rider I will share with the committee on that in terms of the percentage of no further action: I would not want a situation where we go for zero. Sometimes we are dealing with some of the most difficult cross-border serious organised crime cases of anyone in the system. I do not want a situation where the investigation teams are deterred from opening a complex and difficult investigation, which we know might take many years and might require us to work with multiple jurisdictions, because we may not get there in the end. We are one of the few agencies in the UK with the capability to tackle those kinds of investigations. We have to bring that number down, but also explain to you and other parties that sometimes we will open hard investigations and we just cannot get to the threshold.

**Lord Grabiner:** Surely, the point is that you can do all that without announcing the investigation in the first place. What is the answer to that question?

***Nikhil Rathi:*** The answer is we absolutely would not be expecting to announce every investigation. On the regulated firms, I can run through how many investigations we have and what we expect to announce. There are approximately 47 regulated firm investigations open today. Of those, 27 are already in the public domain, because eight of them have been disclosed by us over the years and the remainder were disclosed by the firms themselves. So 60% are already in the public domain. Three or four are about to settle shortly. There are about six which we would not disclose because they are covert or very sensitive and we would not want them to be disclosed. There are another four for which there may be a case for disclosing something, but we think it would be anonymous. So the number we are talking about for regulated firms is seven and, without going into any detail of the names of those firms, I am happy to take the committee through the types of cases we are talking about.

There are five operations and seven firms, because two of those operations involve two firms each. One is a firm in administration. If this policy came into force, we would say that creditors have a right to know how their money is being spent, including to support the regulatory investigation. One is a case where the nature of misconduct is very public; it is a national case in relation to consumer harm. We have had multiple requests and constituency letters from MPs asking us what we are doing about that case.

We have said nothing; we have said, "Thank you for the information". We take all information we receive very seriously; we have not said anything. The MPs—this was the last Parliament, but I am sure it will resume in this Parliament—are not very satisfied with that response in terms of how they are responding to their constituents about something that has been in the newspapers. The alleged misconduct is quite widely known, but we have not said anything at all. I can run through the other two or three.

We are not talking large numbers because 60% are already disclosed by the firms themselves, or by us. Going forward with only 11 or 12 regulated firm investigations being open, we are talking about incremental transparency each year—two to three maybe. In a busy year, it may be a little more than that, with very specific contextual reasons for each case. So these are quite small numbers. That is something we did not really convey effectively in the first round of engagement and I am glad for the opportunity to do that here today.

Q3 **Lord Sharkey:** We understand that it is the FCA's policy to conduct CBA for guidance on rules where the proposal may result in significant costs being incurred. Given the concerns that this proposal has already raised since the announcement, what thought have you given to the need to do a CBA? If you have already started, can you tell us what progress has been made?

***Nikhil Rathi:*** Absolutely, and I can understand why this has been a concern raised in the consultation feedback. For guidance, a CBA is not typically required, but I understand that we have some explaining to do about how we take this forward, as we come back to the market. As I started to do with Lord Grabiner, we will set out in detail our historical and recent experience of the number of cases that may be affected, particularly for regulated firms because that has been the crux of the concern. On unregulated firms, where we are dealing with fraud, scams and criminality, there is a broader understanding in the market that sometimes we need to say something. We already issue several thousand public warnings a year, as do our partners around the world.

At the moment, we do not confirm, even reactively, that we are investigating. Again, people agree that that does not make a huge amount of sense. In those cases, we can move away from neither confirm nor deny and we will give that explanation. We will also engage with the feedback that we have had on share price impact and on the investment climate; I speak to big international investors all the time in financial services. Some of you were at a conference we held last month in which some of the most significant international investors in UK financial services came over from New York to participate. This is to make sure that we are properly taking account of the concerns that have been raised with us.

**Lord Sharkey:** Is what you have just described a CBA?

***Nikhil Rathi:*** The types of cases we are dealing with are from a rogue financial adviser in Port Talbot, through to big tech firms that may not be dealing with operational resilience, through to 45,000 regulated firms' cyber controls or audits. I cannot tell you precisely what our portfolio of cases is going to be every year, but I can give you a sense of what the historical picture has been and what trends we are seeing.

It is hard to put quantitative benefits on transparency. When responding to a group of MPs who have written to us with some very serious concerns in relation to how their constituents have been allegedly

defrauded, there is an accountability benefit because those MPs expect an answer from us. Indeed, during my four-year tenure, the Treasury Committee has written to me several times about investigations. You have seen some of the correspondence; it is sometimes about individuals, sometimes about firms. We are asked for information with quite significant regularity. Indeed, the previous Chancellor wrote to me as well on debanking, where there was a concern around debanking and freedom of expression. Putting a benefit to that around the accountability framework is more complex.

I can also say that, in the areas of fraud and financial crime, we have brought the FSCS levy down to a 10-year low through our prevention work and a more robust approach. When I arrived at the FCA, people were talking about £1 billion. We had been told it was a barrier to growth. They said, "You've got to get tougher on the gateway; you've got get tougher on that prevention". Sometimes, if we have a more robust approach to fraud and financial crime, the people who pay for that are the regulated firms themselves through reimbursement or compensation levies. Only 11 or 12 of them are enforced against each year; 45,000 of them are not. It is a very small number.

**Lord Sharkey:** I am sorry to intervene, but I am still not quite clear. Can I take it that the answer to my question is yes, you have started a cost-benefit analysis?

***Nikhil Rathi:*** We are analysing the costs, and we will give you—

**Lord Sharkey:** If I may, this is a situation in which there is a yes or no answer. Have you started a cost-benefit analysis?

***Nikhil Rathi:*** We will articulate the benefits, the numbers and the costs as we see them. What I am saying to you is that trying to articulate the benefits in a quantitative fashion on a policy like this is more challenging, but we will certainly articulate the benefits as we see them more broadly.

**Baroness Noakes:** Why did you not do that when you put the initial proposals out?

***Nikhil Rathi:*** It is not normal practice to do so when we are doing guidance, but I accept that we should have given more information about our data and the number of cases involved. That would certainly have helped the conversation and explained that we are talking about a small number. So I accept the implication of your question.

**The Chair:** When we wrote to you in April, we asked you to publish a cost-benefit analysis. I accept that the general election and the recess have created some time, but it is now November. When will that cost-benefit analysis be available?

***Nikhil Rathi:*** We will come back shortly to this with a reflection of the feedback we have had and far more data on the number of cases affected and costs.

**The Chair:** That is not what I asked; I asked about the cost-benefit analysis: when will that be available? It would be really useful to the committee as part of our consideration, which is why we asked for it in April.

***Nikhil Rathi:*** The proposals, if we go forward with them, will be subject to the board making a decision in quarter one. We are not going to move forward with the proposals as constituted. The range of feedback we have had on a whole range of topics means that, if we move forward, the proposals will be fundamentally reshaped. What we will look to do is to articulate the costs and benefits of any reframed proposals and to give more data around that as we reconsult the market. Of course, if we come out with a final decision and move forward with something, there will be more detail at the time of the final guidance, such that it can be subject to scrutiny by this and other committees.

**The Chair:** When will these proposals be issued?

***Nikhil Rathi:*** We hope to come back to the market within the next week or so. There have been other conversations with you, Lord Chair, and it was appropriate for us to wait for this hearing so that we did not give you something to consider at very short notice. We were considering publishing something a little earlier, but we have had this hearing in the diary for a few weeks now, so we thought it was appropriate to come and hear the advice of the committee. We will then come out with an update which, we hope, will help your scrutiny as you finalise your report in the coming weeks, and show the market, with which we have been engaging very extensively—our practitioner panels, trade bodies and firms directly—where we are going with this.

**Lord Sharkey:** I do not think you have answered Baroness Noakes's question about why this was not done prior to the original set of proposals.

***Nikhil Rathi:*** As I said, the normal approach on guidance—these are not rules; it is guidance—is that there is no CBA requirement, so that is the reason it was not done. However, I accept that, on something like this, particularly when there has been such a level of contention about it, it is incumbent on us, as part of our accountability and because of the type of relationship we want with all our stakeholders and our regulated firms, that we explain ourselves. I take that very seriously. We will go as far as we can to explain the position. Obviously, on some individual cases we cannot say too much, but we will set out case studies of where this could have been applied, the numbers involved, the types of cases, the trajectory on our operational performance and how the board will oversee us. Hopefully, that will address a number of points that have been made and enable us to move forward in a more constructive way than we did at the outset.

**Lord Eatwell:** While we are on the CBA question, has your independent CBA committee been established yet—the one that is required under the FSMA 2023?

***Nikhil Rathi:*** Yes.

**Lord Eatwell:** It has, so why did you not just give it the job? It is independent; tell it to get on with it.

***Nikhil Rathi:*** We have a number of rules and there is a question of how much load is given to the CBA panel. There is a threshold for the CBA panel to get involved; for something like motor finance, it would get involved. It is a group of part-time people, and there are some very big items coming down the track—for example, on capital markets, on motor finance and other things. As I say, what you will see when we come out is that we are potentially talking about regulated firms, probably one to two a year, maybe a couple more than that. The numbers around CBA will be somewhat more limited than the perception was at the start. This is not a case of us opening up the entire book of investigations; that has never been the intention.

**Lord Vaux of Harrowden:** I was interested by your comment that you were ready today to publish a letter setting out where you are on this, but you wanted to wait until after this committee. It would be interesting to understand what you would say if you were to publish that now.

***Nikhil Rathi:*** I am very happy to take you through that and hear your reactions. We acknowledge that the manner in which we communicated this led to some of the misunderstandings. We will explain what happens in terms of our investigations. This does not apply to individuals; it only applies to firms and we do not get that much contention around unregulated firms. There are around 128 open investigations. Of those, around 82 are unregulated firms, typically people who we think might be doing regulated business without authorisation—fraud, scams, those types of firms—where we issue warnings and then we may be investigating those firms. There is not a huge amount of contention around us selectively naming more of those, because sometimes you have very fast-moving fraud and you need to warn consumers that something might be happening.

At the next stage, 60% of those, or 47 firms, are already public. What we will then be saying is, "Let's talk about those five operations and the types of things we are thinking about. Let's also look at the public interest framework". The concerns we heard were that it was too vague; people could not predict what we were saying. We want to bring a lot more clarity to that, including making clear that we would look carefully at the impact on a firm, be particularly mindful of small firms and give at least 10 business days for representations. Bear in mind, an investigation or supervisory work has often been going on for 18 months or two years beforehand. We need to make sure there is a process whereby firms can properly engage with the potential of a formal announcement.

We will also include a reference in that public interest framework if a partner organisation has made an announcement. That is for further discussion; it is not a final decision. We sometimes find ourselves in the curious position where we are working with a partner—I mentioned the

FRC, but sometimes it is an international partner—that has announced and we are staying silent. We are working together because many of these partners have a routine policy of announcing.

Online safety is another example. Ofcom is taking the lead on that, but we support on fraud. Ofcom's policy is to announce everything at the outset, and it routinely does that on its website in a very careful, measured way. If we were ever to work on a case with Ofcom, it would seem strange that our part of that was not known to the public and to Parliament, so we will include that in the framework as well. We will also set out a number of case studies of cases that are now public where, if the new framework had been in place one or two years ago, we think it might have been announced so that people can test whether we are getting that right. I mentioned the PwC case earlier where the FRC announced and we did not.

Another example I can give is Citigroup. The regulators fined it £60 million a couple of months ago for a massive algorithmic trading failure in 2022, which moved markets in the UK and in continental Europe very considerably because it caused considerable investor detriment.[1] The firm itself made an announcement that its trading controls had failed at that point. We were getting a lot of incoming from overseas market participants and regulators saying, "What are you doing about this? This has happened under your watch here in the UK".

We do not think anybody would have been particularly surprised to learn at that point that we, the regulators, were investigating something as significant as that. We do not think it would have affected the share price of a global firm like Citigroup, but it would have given assurance to people that it was being investigated. From our perspective, we want major market participants to know that if you are putting in billions of dollars of erroneous orders that cause disruption to the market, that is a problem for us because that causes investor detriment.

**Lord Grabiner:** Is that not a case where the regulated party itself went public?

***Nikhil Rathi:*** It went public with the fact that its trading controls were responsible; it did not go public with the fact that it was being investigated by regulators.

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[1] Note by witness:

The regulators' findings are set out in the following published Final Notices:

1: https://www.fca.org.uk/publication/final-notices/citigroup-global-markets-limited-2024.pdf

2: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/regulatory-action/final-notice-from-boe-and-pra-to-citigroup-global-markets-limited.pdf

The FCA found that, "The incident coincided with a material short term drop in several European indices for a few minutes and the MSCI Europe ex UK Index fell just over 4%, compared to its previous close, within five minutes of the erroneous basket starting to trade." [Paragraph 2.8]

**Lord Grabiner:** No, of course not but, if it is happy or honest enough to make a proper disclosure, then that is a different case. The kinds of cases that my earlier questions were directed at were cases where the regulated body was very concerned that the matter should be kept in absolute confidence because of the impact upon lenders' arrangements, shareholders' arrangements, investment positions and the future of the business—because there is no smoke without fire.

***Ashley Alder:*** Can we step back a little and look again at how the topic has developed over some months? We looked at this in our October board when the executive came back to us to present on the level and content of engagement, from the point at which we decided not to conclude the original consultation and engage. Essential was clarity around why we would announce in individual cases. This was really important to the board and we were on all fours with the executive on this. It sort of comes to the CBA point which is that the feedback we are getting is more around what we would do case by case.

There were a couple of questions. First, why would we announce? That goes to the question of whether the criteria we would employ—the examples that Nikhil's been referring to—are instructive, and we will develop those.

The second—frankly, this was not highlighted sufficiently in the first iteration of this—question is the impact on firms. The impact on firms and markets, shareholders and such like—shareholder perceptions, lenders—is all really important. Actually, what we have discussed, and the executive has been very clear about this, rather depends on the type of firm. Very often, you will experience a large global firm that will be constantly disclosing lists of investigations and you will find there is next to no share price impact in relation to that. You will find small firms, or the small firms community, that have expressed a lot of concern around the effect on their business. So  impact on firms is number two.

Thirdly, from a process perspective, how do we measure that impact or factor it into decision-making? That comes to a point that Nikhil made, which was time for representation. Very often we have had a very long supervisory engagement with a firm and, therefore, will pretty much know what issues are before us. It is really important that firms have a sufficient opportunity to make representations on potential impact when we have articulated the reasons why we would intend to announce in a particular case.

Basically, that is where we are at the moment. The next phase is to go out and be more precise on that and synthesise the feedback we have had so far into a document. We have not reached a conclusion. As Nikhil mentioned, we are very probably heading towards the first part of next year when this comes back to the board after that second iteration.

***Nikhil Rathi:*** If I may, this is where we are having to balance the interests of the firm and the interests of the market. I can give one case I can explain to the committee which, under a new framework, we may

potentially want to say something about. It is a firm that we enforced against recently for issues to do with market integrity and we fined them. Those market integrity issues have an impact on a number of other firms in the market. It has not remediated as it said it would, and we have had to open a further investigation into that conduct. We are working through that investigation, but the nature of that conduct is such that other firms in the market are affected by what we believe is happening, and we previously enforced against that firm. These are balances that we are trying to strike.

Funnily enough, I was talking to one of my directors about this last week. We are sometimes dealing with high-risk decisions either way. One case that was talked through with me involved a regulated firm. We believe we have intelligence, but we are not yet at the point where we can take a charge or come to a conclusion, but money may be being stolen from clients in that firm. As I say, we are not able to move to a charge at the moment, but it is very serious. We have a choice in that situation and it is a high-risk choice for us either way. If we intervene, that firm fails; if we do not intervene, that alleged misconduct and potential criminality continues and more clients are affected. Whichever way our directors go on that is a—

**Lord Sharkey:** What test did you apply to resolve that?

***Nikhil Rathi:*** We test that. That was a supervisory intervention. I am giving the kinds of things we are dealing with here. We tested our statutory objectives against our market. We have an objective of consumer protection and market integrity. We have to evidence why we have taken the decisions; these decisions can be challenged in court if we intervene, so we know we could be subjected to judicial review and other mechanisms. In that case we did intervene, and in that case the firm did fail upon that intervention and more misconduct was subsequently discovered by the administrators.

Those are high-risk decisions either way that people on the front line at the FCA are having to take every day, particularly in the fraud and financial crime arena. I hope we can talk through this discussion. The public interest balance is not always straightforward; in the Starling case, who pays in the system if a bank is allowing sanctioned individuals in, and who is paying if it is not dealing with fraud properly? The other banks pat.

Q4 **Lord Lilley:** What you have said so far sounds like a solution looking for a problem. You have suggested a number of bureaucratic and procedural reasons for proposing what you have proposed. First, you have a duty of transparency, so this is being more transparent. Secondly, lots of MPs often want to know what is going on; I used to be an MP and, therefore, I know how terribly important I was, and we wanted to know answers to things. Thirdly, lots of other regulators with whom you work already announce it, so it will not make any difference. Fourthly, it is not going to have much impact.

But you have not said what problem you are going to solve, in terms of speeding up, getting better results or proving something which you could not prove before, other than the issue which Lord Grabiner proposed to you which is that this is to elicit information from whistleblowers. You did not mention that, but you were offered it. Is that what it comes down to? All the others are procedural and neatness and tidiness, but the only thing that is going to make any concrete difference is bringing forth whistleblowers. Can we focus on that?

***Nikhil Rathi:*** That is one component, but I would not hang my hat entirely on that. MPs are very important, as are Members of this House. We have to take seriously the fact that, with some regularity, the Treasury Committee has written to me over the years asking for information. I can give you the list of cases: FinCEN, Greensill, Odey, Woodford, LCF, Blackmore, HBOS. We have a responsibility and a duty to respond as candidly as we reasonably can to those parliamentary requests.

In the case of consumer harm, if there is a major consumer issue that we are investigating but we are not at the point where we are able to say that we are investigating, what often happens is that the consumers affected by that issue—as is happening with one case that I mentioned just now—are hiring lawyers themselves, or are hiring claims management companies to seek their own redress, because they do not know what we are doing. If there is a redress situation at the end of the investigation, those lawyers and claims management companies will take 30% of that redress from them.

When we have looked in hindsight at some situations we have dealt with, we have asked ourselves, "Could we have done things a little differently here?" Could we have said, in a very careful and measured way, "We are investigating this situation. We're not able to say whether there has been a breach or not. Our advice to you, consumer, is take no action at the moment while we complete our investigations"? Sometimes these are cases that Parliament asks us about. Sometimes those consumers are wealthy consumers; they can afford to give up their 30%. Sometimes they are not.

That has certainly caused reflection for me and my senior team as to whether, again with hindsight, we could have done something better against our core primary objectives, but not in a way that impacts competitiveness, because the people who pay are often the people who are funding the compensation levy. The other firms are paying for this; we think bringing that levy down is also important.

That is one concrete example. In response to Lord Grabiner, I explained that there are sometimes cases where the alleged misconduct may be repeated misconduct and of a nature that is affecting the integrity of a certain market, which is affecting other market participants and the honesty and premise of that market.

**Baroness Donaghy:** I just want to follow up the figures that you gave

earlier. You said that the 67% has gone down to 56%, and you are aiming for something around a third. That seems to be a wonderful achievement, if I may say so. Given my background, which is more trade union and public services, I would be sympathetic to anybody that wanted to please consumer groups and whistleblowers, and I understand, therefore, why this consultation might have been initiated. Where I am concerned is that when this committee—it was unanimous agreement, myself included—wrote in April about the strong reaction of the market and industry and asking you to pause, at that stage the organisation did not respond. Was it in October 2023 this was launched?

***Nikhil Rathi:*** It was earlier this year, February.

**Baroness Donaghy:** It seems to me that it was a kind of "let 1,000 flowers bloom" exercise rather than a structured one. You have just given explanations about why you have gone out on consultation. If those issues had been included in the consultation, I think they would have been reasonable. You have given examples of where you cannot speak at the moment and how you would like to be able to. They all made absolute sense to me. What happened to cause you to have that reaction when you did not seem to have, if you like, the political empathy or flexibility to react to a situation and maybe give reassurances earlier in the whole process?

***Nikhil Rathi:*** There was a reaction to the consultation. There was a lot of engagement during the consultation period. We extended the consultation period to allow for feedback, but we also came out with a statement both to this committee and to the Treasury Committee. Before the election, I gave evidence to the Treasury Committee to assure it that we were not going to rush to a decision. Then the election intervened and committees were disbanded and then reconstituted.

To an effect, we have slowed down what our normal policy-making timetable would be. We said we wanted to make a decision this year, but we are not doing that. We want to hear from this committee and from the Treasury Committee. We are engaging closely with the Treasury and the new Treasury Ministers as well. We will absorb all that, and the board will look at it at the beginning of next year. Through that period, we have had several hundred engagements with firms and consumer groups, and we have absolutely received a clear message.

The point you make around consumer groups is important because, obviously, there are 45,000 firms and a number of trade bodies and consumers. There is a specific obligation in the statute for us to listen to our consumer panel and others. That came in a number of years ago because there was a concern that the consumer voice is just not resourced: it does not have the money and the people to feed back in the way that the financial services industry can. I think you have received some responses from consumer groups and whistleblower charities. While they are not as numerous, they bring that perspective to the FCA too.

**The Chair:** Can I just ask a question, because I am getting a bit

confused here? You mentioned a case where the FCA had to intervene against a firm that you had already enforced against. Can you explain why the FCA's existing powers to disclose in exceptional circumstances did not apply in that case? Are you just not exercising your existing powers sufficiently?

***Nikhil Rathi:*** We thought carefully about that. There are two cases: the high-risk case I was talking about was a supervisory intervention, not an enforcement intervention, but I also talked about a case which is live now which is an alleged repeated offence. I gave the numbers earlier of cases in regulated firms that we have and what is disclosed, and 47 regulated firm investigations are currently open.

**The Chair:** I am sorry to interrupt you. My question is a very simple one about your existing powers and why they could not have been used.

***Nikhil Rathi:*** I was coming to that. Eight of those were disclosed by us under our existing powers—eight out of 47. Historically, as an institution, over the 10 years we have had this policy, around 10% to 20% are disclosed under existing powers. We felt it would not be candid with the industry or with Parliament for us to move that number materially as compared to existing practice, and shift the criteria internally—by stealth almost—without coming out and talking about it openly. Here we are talking about confirming another 20 cases which are public already, and another four or five which would take that number between 50% to 60%. Quite a lot of it is disclosed already though. We felt that that is not exceptional in the context of the overall numbers, and we could not defend it as exceptional.

**Lord Eatwell:** Could I just follow up on the cost-benefit analysis while it is still Lord Sharkey's turn? I am struck by two elements of the discussion so far: one is the use of this number that 60% of the investigations you begin do not come to a final enforcement action. When I was running the regulator in Jersey, I think our number was higher, and the reason is that we would start, then we would get remediation from the firm and we would say, "Okay, you've remediated; we're not going to prosecute you". A large number of that 60%, in my guess, will not be prosecuted because you have had the remediation along the way. What would you guess would be the proportion of potential investigations that would be leading to prosecution but do not, simply because you have achieved remediation along the way?

***Nikhil Rathi:*** Thank you for raising the international comparison, because that has also been a relevant feature of this discussion. One of the reasons we are able to bring that caseload down now, and one of the reasons why we feel confident, and it is already coming through in terms of the cases opened since 2023, is because we have very significantly stepped up our prevention work, both at the authorisations gateway and in supervision. I do not know what your experience was, Lord Eatwell, in the jurisdiction you were in, but we are using our powers in the supervisory arena much more practically.

As you saw with the Starling Bank situation, we do not just go to enforcement. We identified a problem; we had a discussion with the firm. There was an independent expert. We gave it a period of time—over a year—to sort the problem out. It voluntarily agreed to sort the problem out. It told us it had sorted the problem out. What actually emerged is it had not. At that point, we enforced.

So the reason we are bringing the cases down so considerably is because we are dealing with many more, not letting them in in the first place, and dealing with it through supervision. Most of the regulated firms that end up in enforcement will have had an opportunity to remediate the problem over a year or two years before we move to an investigation. During the investigation, they may take such dramatic action and sort the problem out so quickly that we feel it is not proportionate to enforce and fine them, because it is going to be pretty serious. You are talking about only small numbers out of 45,000 a year. It is going to be pretty serious by the time you are ending up in enforcement, so they are going to have quite a lot of work to do to persuade us of that.

That is quite important. If you look at the US—and it will be different under the next Administration—one of the things on crypto regulation, a point made by the US authorities, is that they do crypto regulation by enforcement. They go to court all the time.

**Lord Eatwell:** The other point I wanted to raise, following on from Lord Sharkey, is that we have a lot of statements here by people objecting to what you are doing. There is very little evidence. There is a lot of sound and fury, but not much evidence. It seems to me that it is beholden on you, at your next stage, to bring some real concrete evidence. What has been the impact on firms where early statements have been made? What is the impact in other jurisdictions? What is the impact when people self-declare? Just trace through and let us know what really happens because we have a lot of debate and discussion, a lot of it very angry, but no evidence.

***Nikhil Rathi:*** We will aim to meet that request as fully as we can. I do not object to the strength of feeling; trade bodies and firms will absolutely express their perspective. It is our job to take all that evidence, have a discerning mindset and present our next stage to Parliament and the market. One of the arguments that was made, for example, is that this would cause runs on banks. I started my career in financial services dealing with financial stability. I was dealing with runs on banks live in 2008, through the night, for many nights on the run. We have no intention of causing serious financial stability consequences.

Of course, we talk to the PRA about anything involving a dual regulated institution if there is a financial stability consequence. There are any number of cases that have been disclosed by banks publicly where it does not have that impact, and there are some very difficult disclosures that we have navigated carefully. For example, we took a criminal charge against NatWest. We ended up taking the first case criminally prosecuting a bank because of money laundering failings, and it pleaded guilty in the

court. Before the court hearing, we had a lengthy and elaborate discussion with our colleagues at the Bank of England when the decision was taken to announce the fact that there was a criminal investigation, because the criminal investigation announcement in and of itself may lead to some of the concerns that Lord Grabiner has in terms of what investors would think, what the debt market would think and so on.

In the end, the firm itself announced it was under criminal investigation, and we were satisfied that that was an acceptable thing to do. The markets absorbed it and those impacts did not come through. We will always be careful in those situations, but we did think it was important that the investors—the taxpayer was an investor and still is an investor in that firm—understood when they were pricing that stock that there was a serious criminal investigation pending, because they have to hold the board accountable.

**The Chair:** Would the board not have been under an obligation to disclose that anyway?

***Nikhil Rathi:*** No, it would not always. At the start it was not, but that is not always the case. There is a definition. It depends on how likely you think it is going to lead to action that is materially detrimental to shareholders.

**The Chair:** Baroness Noakes, do you have a view on this?

**Baroness Noakes:** I do not think I should comment.

***Nikhil Rathi:*** Lord Chair, your point about share price impact is correct. Both here and in the US, if you think that there is a material share price impact from an investigation, you would announce already. Indeed, we have the curious position where we open investigations into firms that have an affiliate or parent in the US; our investigation is announced in the US to the SEC, and we do not even announce it to our own market.

**Lord Kestenbaum:** I would like to come back to this average time from investigation to conclusion of almost four years, leaving aside your conversation with Lord Eatwell on the 67%, where your point is well made. Mr Rathi, when you came last time you spoke very passionately about your ambitions to transform the culture of the organisation that you run. You have been in post for a little over four years, I think, and one of the ways that you said you wanted to set about doing that was by setting tangible, challenging performance measures for your team. As I say, you spoke very persuasively about that.

Are you prepared to say something about the average time from launch of investigation to conclusion, leaving aside the broad terms with which you have spoken to our committee about it? I am very aware of the constraints of hugely complex cross-border, multiple jurisdiction cases, but I suggest that those are probably not the majority of cases and they may well take up to four years. It might be a question for the chair, but I am interested in the degree to which you can stand behind the points you

made last time you came about transforming the culture of the organisation and establishing pace—your phrase was enhanced pace and enhanced focus—as one tangible way of expressing transformation.

**The Chair:** Just before you answer, we have to be very careful about evidence that was given in private session. I do not think you have crossed the line, but I apologise to the chairman if he feels we have.

***Ashley Alder:*** Thank you for the question. It is a really important question and, as you would expect, the question has been before the board in terms of the overall direction of the organisation not only from an enforcement perspective but from a supervisory perspective. In essence, we were looking at the historical approach of taking and investigating pretty much every case that comes in the door. In other words, the triaging process was not as firm as it should be. That is point number one.

Point number two, and you often find this in regulators or regulatory organisations, is a sort of siloing effect between supervision and enforcement; in other words, very little communication, which comes back to, in certain circumstances, increasing the number of times we would name firms. Getting to the point: as a board we were very enthusiastic about a thematic approach, so being very disciplined in enforcement about taking the cases that are tackling the greatest harms, whether wholesale markets or consumer, at a higher bar to establish whether a case should be pursued, and part of that relates to chances of success in practice and there will be different components according to that. Basically, that means higher bar, fewer cases, and the aim would be fewer NFAs—no further action. There is a point around this when it comes to unregulated firms which is relevant to what Nikhil mentioned earlier on.

Really important is the degree to which we can front-load our approach when we are interacting with firms and we can see that there are problems so we intervene from a supervisory perspective; in other words, using intervention tools, falling short of enforcement, because in my experience that can be extremely effective, not least because you nip problems in the bud before they get to that stage.

That is the direction of travel. It is absolutely central to a shift in culture both within supervision and enforcement. Clearly, it is like many changes in culture: it cannot happen overnight. So it is a question of how it is evolving and, absolutely, how the statistics are showing that the triaging, the use of supervision and such like, is working.

***Nikhil Rathi:*** I like a challenge, Lord Kestenbaum. I would definitely like to see the 42-month number come down. I will give you some examples of very recent cases opened in 2023-24 which are now concluded and are public. Successfully prosecuting an individual for running illegal crypto ATMs concluded in 15 months. Action against Coinbase, another crypto firm, closed within 16 months; Starling Bank, 14 months. Volkswagen Financial Services, which treated customers in financial difficulty poorly,

closed within 13 months. Those are recent cases with us having done the work of authorisation and supervision. I have to speak under the control of the board, so I cannot commit to it but, in deference to Ashley and the board, I would hope we can get that down to 24 months. I hear what you say about the large cross-border cases, but I hope that by us being able to be transparent with you, we can start to talk about what is fitting in that bucket of complex cross-border cases that might take a number of years, and what is something we can deal with more quickly.

The small number of complex cases, though, distorts the average because sometimes it is not just the investigation of the initial offence. We keep an investigation open until we have secured a confiscation order. Sometimes this money has been taken overseas and we are trying to get the money back and that can take seven, eight, nine years. That is because we are not generally talking to people who are co-operative with us or disclosing things to us, even after we have settled, so those sometimes very lengthy cases can distort the average. I hope, through this committee and through our work with the Treasury Committee, that we can explain some more of that work. The value of this experience over the last few months is that we are able to talk about this somewhat more openly than has been the case previously. I think that is very valuable.

**The Chair:** Okay. Lord Hollick, you have been waiting for some time.

Q5 **Lord Hollick:** I want to take you back to the discussion you had with the Chairman at the start, which was about the nature and quality of the conversation between you, the regulator, and the regulated entities, before you embarked on this policy. Ashley, the key to it is really the comment that you made on 8 May to the Treasury Committee, where you said, "In terms of the reaction to it, in truth, at the time we put this out we were not expecting such a stern reaction as has come from industry". What I can gather from that is that the industry reaction is, "Well, all you need to do is ask".

What steps did you take in your role as chair, and on behalf of the non-executive directors, to satisfy yourself that you had actually taken the temperature on this issue, that you had read the room correctly, and that you had anticipated—with the vast experience you have, not only in this country but abroad—what the likely reaction was going to be? At that point, why did you not suggest that the executive look again at what the likely reaction might be, and perhaps proceed in a different and orderly way, rather than—dare I put it—in a rather command fashion, to implement this? It seems to me that you have a particular responsibility here as the chairman of this, to make sure that the executive does not really get ahead of itself.

***Ashley Alder:*** Thank you for the question. To divide this into two: again, from a chair and board perspective, clearly there were lessons learned around the way in which the consultation was rolled out in the first place.

**Lord Hollick:** When you were talking about this before the consultation, in informal discussions, how were you able to form a view about what the

likely reaction would be from the industry?

***Ashley Alder:*** The way we saw the proposals at board, and in discussion with the executive, was that this was not a fundamental change, and this has come out of the discussion today. This was a change from very rarely would we announce, to sometimes we would. It did not land. That was the board perspective on the proposals themselves. The important point from the board was once we saw the reaction from industry, which was fairly instant and undoubtedly strong, the important thing for us was, "Okay, having regard to what has happened and that reaction, what lessons do we learn for the way in which we roll out a consultation?" Frankly, there were lessons to be learned. I went through some factors earlier on, at the very beginning of the meeting.

Really importantly for us, is when we got to the stage of reconvening with the executive in board as to what to do next, there were two parts: first, lessons learned around the way in which we roll out proposals, and the degree to which we possibly should have expected more in terms of reaction. Secondly, what do we do in light of the reaction? From my perspective, that is a really important piece. This was a board meeting in May after the end of the consultation period. Clearly, the most important decision is we do not conclude at this point, not least because we absolutely needed to respond to some points that were raised in the reaction and engage with industry to understand their perspective in more depth. That is what has been happening.

From a board perspective, we absolutely recognised from a lessons-learned perspective that the initial rollout was suboptimal. It landed with industry with a degree of impact that really was not aimed at. Then into the question of how we react as an organisation to that feedback, our approach was absolutely correct, which is that you engage to understand. We have not taken any decision at the moment because we are in the midst of that engagement process, which again, is the right thing to do.

**Lord Hollick:** I ask this question against the background of a drumbeat that has so far gone through the inquiry that we are having on the secondary objective, which is that there is a certain reluctance from regulated institutions—banks—to talk directly to the FCA, for fear of a punishment beating or something like that. Now, it seems to me that this imposes a particular responsibility on you as chair, to make sure that there is a proper grown-up dialogue that goes on between the regulator and the regulated entities. Here is an example where perhaps some informal discussions could have been had by you to ascertain whether or not this would be well received, what the reasons for that were, and you could ventilate that. As a result of the surprise reaction that you have had to this, have you taken steps to build relationships with some banks and entities yourself, separately from the normal communication channel that the executives have, to make sure that you can avoid a car crash like this again?

***Ashley Alder:*** Yes, part of my role is to get out there in the community, including with financial services firms, which I have been doing. As you

might expect, either in the context of round tables or more private sessions, often with chairs of organisations, this topic has come up. That would not surprise you at all. The impression I get from those conversations is, first, there is an understanding now that the level or type of communication at the outset was not optimal. There was a degree of confusion as to what we were actually aiming at in relation to this. The impression and the inference that was picked up from the consultations was that we were moving from one end, which is very rarely announcing, if hardly ever, to all the way over to the other end. Actually, we were going to somewhere in the middle, and we are adjusting our position. There was an understanding that at the outset there was not a meeting of minds on the consultation.

Secondly, there was a high level of appreciation, whether in FCA panels or in round tables or otherwise, that our decision to engage to understand was the right thing to do. I have had feedback that it is absolutely right that the FCA should be listening. Given the strength of the reaction, it is absolutely right that we understand where firms are coming from, particularly in relation to the topic that has been raised with me more than anything else, which is the relationship between the criteria we would potentially use to announce and firm impact. Firm impact is probably the phrase I have heard more than anything else.

Finally, interestingly, and it goes back to some conversations about why we would do this in the first place—what has changed and what is changing in relation to this—is a discussion about the benefits of announcement; for example, the question of the circumstances from a public confidence perspective, that we would be saying to the public that we are on the case, or the circumstances where we are announcing in order to prevent continuing harm to consumers—so that conversation about benefits.

Now, arguably, all that conversation could have happened a lot earlier. But from my perspective, it is the nature of consultation that you consult; you will obviously get a reaction in relation to consultation, you always do. This was strong, and we are still in a consultation mode. We have not concluded, and we are getting the feedback now to that consultation, which is really positive. Had the executive come to us in May and said, "Well, we've heard all this feedback, we don't agree with it, and we're going to just conclude and go ahead," that would not have been the right decision. It is not something that the executive put to us as a proposition. We had to engage properly. I hope that gives a flavour of how we are approaching it.

**Lord Hollick:** Can I just come on to the question of whistleblowing? One of the benefits, or reasons for this approach, is that it would encourage whistleblowers to speak up, or to come forward. Now, for disclosure, I have been one of the judges on an international whistleblowing award over the last three years. We have done quite a few cases in the financial services sector, not only in this country but internationally. Thinking through the cases that have come forward for review by this panel, none

of them had shown that there was an impact or benefit of the regulator making public statements about things, to encourage further whistleblowing to come forward. The whistleblower came forward usually avoiding the regulator and used the press to get the information into the public domain to start the debate off. What evidence do you have from all your analysis that more whistleblowers are encouraged to come forward, as a result of the approach of name and shame?

***Nikhil Rathi:*** I would make two points there. First, our whistleblower survey, which we published, flagged that whistleblowers who had interacted with us said that our non-communication with them was a drain on their confidence in the overall whistleblowing framework. As I said, that communication may be that we are opening an investigation, or indeed, it may be that we are not investigating. At the moment, we neither confirm nor deny. They sometimes feel they have risked their livelihood to come to us and they have shared some very sensitive things with us, and as Lord Kestenbaum highlighted, sometimes we are not giving them closure for a number of years. In their survey to us, it is qualitative feedback, but they said that made their confidence in our framework weaker. Again, we published that survey, and we want to respond to that feedback and see what we can do.

The whole question of whistleblowing is also being taken up by other regulators and other enforcement agencies. The SFO, our colleague there, has opened the discussion about whether agencies in the UK should move to a more US-style system of paying whistleblowers. What our colleagues in the US would say is that it is a very structured system: they have the Office of the Whistleblower, and they have legal constraints around it. They pay for evidence. The whistleblower is brought into the tent, they are told it is being investigated, there are strong legal restrictions around what they can disclose, and then they get a share of the fines—as much as, in one case in May 2023, $279 million. What the US SEC has said publicly is that it believes that whistleblowers' evidence, and the fact it has this reward system, has enabled it to secure $4 billion of ill-gotten gains back from those who have breached US laws. That is its published evidence around it. It is very countercultural for the United Kingdom to go down that track. I am not suggesting we would do it, but I just want to point out what the international evidence is on that. But that is a system in the US where there are big numbers that get paid—$279 million, in another case over $100 million.

In our situation, one reason we felt that we may need to name a firm, is that it would be very difficult for us to say just to a whistleblower themselves that we are investigating because sometimes they may go to social media directly and disclose that fact, and that could be very destabilising for a firm. We have to be very careful and sensitive about how we handle such situations. I would not say this is entirely what this is about: it is one fact among many that we have talked about this morning.

**Baroness Noakes:** It is all very interesting about whistleblowing, but

you did not really answer the question put by Lord Hollick, which was whether there was any evidence that the procedures that you had would encourage more whistleblowers to come forward, in the particular cases that you were publicising. If I see through what you have just been saying, the answer is no.

***Nikhil Rathi:*** What I am saying is that whistleblowers have told us that our current framework means they do not have confidence in the framework. If that is what the survey evidence is telling us, there is a point for us to respond to. I do not want to go down the path Lord Grabiner was worried about, of us trying to dig for evidence where we do not have it. If we want witness evidence, we can publish a questionnaire and ask for witnesses on fraud or something else.

Without going into any details of the cases, what I would say is that where there has been whistleblowing about a non-financial misconduct case, where, in actual fact, it becomes known that there is a situation that is being looked at by the regulator, it has encouraged other people to come forward to us confidentially to our whistleblowing line. In that case, it is because it was in the press. They would not have come forward to us if they had not known that this was being looked at by the FCA. But those are the data points I can share with you, Lady Noakes.

Q6 **Baroness Bowles of Berkhamsted:** For the purposes of this inquiry, I have to declare my interest as a non-executive director of the London Stock Exchange, given it is a regulated entity. From what you have said so far, I can see that a lot of this is all about vocabulary: how high or low is a bar, and maybe you were a little out of touch in the way it was initially introduced. Those are my words, but you have said similar. It will not come as a surprise to you, but I want to explore another matter where vocabulary has been very important: cost disclosures.

This is not about whether to disclose costs, it is about how they are described, what they are called, so that they do not mislead. Of course, both the Government and the FCA have tried to fix this with the statutory instruments and forbearance, but the current situation is exactly the same as it was, if not worse, because the Investment Association and platforms have said they will not accept zero in the EMT. Nikhil, I know you have said before that that is an industry standard, but that is how the numbers get into the thing that is described as the ongoing charge forecast. If you take a platform such as Hargreaves Lansdown, that then generates other things. If you click on a button that says, "How much does it cost?" and if you invest £5,000, and it is growing by 5% every year, it still comes up with a computation that you might end up with less than you put in because it is telling the investor that charges are coming off their shareholding value.

The justification for this, Nikhil, is actually what you said to this committee when you gave your explanation on 8 May. You were saying that of course there are costs, but they are embedded in the company. But you gave the example of, "If you put £100 into an equity investment trust today and all the equities that compose that portfolio and that

investment trust stayed at the same price, your value in a year's time would be lower because of the management fee that the investment trust manager charges". That statement is actually saying that the investor has less, which cannot be true because you have also said that the investment trust is staying at the same price. In my view, you obviously had to be talking about NAV there, not about share price.

I wrote to you about this, Ashley, saying the position the IA quoted that, "The FCA position is that investment trust costs are misrepresented under MiFID and PRIIPs but they are not zero". This is from the Treasury Committee oral evidence, 8 May 2024. It is saying that that is the only policy that exists because there is not anything in terms of policy about this in the statutory instrument. At the moment, those investment trusts that have availed themselves of what was intended by the Government and the FCA, say, "Well, there isn't any cost that is coming off the shareholding, there isn't a mechanism to take that money off your shares". But if you go on to a platform, you will be told variously that that is exactly what is going to happen. Because if you click on what OCF stands for, it tells you that that is money that is coming off your investment. There is one platform that has actually changed it to say, "Well actually, it's not coming off your investment after all".

There is this confusion going on. But if the investment trust puts zero into the EMT, then Hargreaves Lansdown will pop up a message saying that it does not have the information, and you cannot buy it. Some boards are saying, "Well, we'll have to put a number in," so they put a number in that they know is a lie because it should be zero under consumer duty. But the platforms are saying, "If you put zero in, we're going to say under consumer duty that you haven't told us what the costs are"; whereas, of course, they are in the annual accounts. Some people are putting them into the KID, as there is no need to stay within the strict confines of the old PRIIPs KID. Others are publishing statements of expenses that correspond to the disclosures that are in the annual account, so that there is something at point of sale that you can click through to get to, although it does not come in through the EMT.

We are in a worse situation in that if trusts do what is right, they are blocked, or they have to continue to mislead. Can you help us out of this? If you said that you were talking about NAV in that statement it would make a whole big difference.

***Ashley Alder:*** Can I kick off on this? I will try to keep it short. The last board discussion we had on this was about forbearance, not too long ago. Clearly, from a board perspective, we are focused on the discussions we will have once the executive has firmed up proposals on a replacement for PRIIPs, in effect. The impression that I get at the moment is that there are different views within industry. As part of looking at this, it is important to understand possibly with a greater degree of granularity what those views are.

It is fully understood that net asset value is not directly accessible to shareholders in investment trusts. However, I have noticed investor commentary to the effect that over the longer term, NAV in investment

trusts, and of course in other structures as well, drives long-term performance. There is an overall question about level playing field and comparability, and the degree to which investment trusts are marketed in the same way, or in competition with, or in the same sector, in effect, as other closed-end investment funds. Those are the parameters of the question. As I understand it right now, post forbearance, platforms and indeed the Investment Association, are making decisions themselves about this, and those decisions are not taking the same viewpoint as the one you have expressed and you wrote to us about. But that is the landscape as I see it, which we would need to pick through when we move forward to PRIIPs from a board perspective.

**Baroness Bowles of Berkhamsted:** You are saying that you do not want to intervene to stop a potential investor investing on Hargreaves Lansdown in an investment trust, being told that he is out £1,000 on his investment when it is untrue? That is what is going on. I cannot actually understand why you have been allowing that to go on for the last two, three years. Maybe you have just never gone and clicked on it. But there is blatant misinformation because people are being told that money is being taken from their share price. Now, they are not being told it is a driver for performance or things like that. Nobody is disputing that. It is just displayed up there: "This is your investment value, and these are the charges that are going to come off it, and that's what you get at the end". Which is not true. That is misleading.

The Investment Association is 45 times larger than the investment trust sector. It held a members' meeting to collectively agree that it would take this view against something that you have just said is marketed in competition with it, but it is a very small sector by comparison. There are other factors it has to take into account: there is the role of premium and discount and all kinds of other things. Not concentrating on those and the fact that if you go you choose between a share, an ETF, a fund and an investment trust, they are not literally side by side—but what they have done is push the investment trusts into the format that was meant for open-ended funds. They get the wrong answer, and there has been no intervention. But surprise, surprise, it was the Investment Association that was in charge of doing the EMT for the UK.

**Lord Kestenbaum:** Lord Chair, may I reinforce that point very quickly? I do not accept, Mr Alder, that this stems from a lack of consensus in the industry, as you put it. It stems from the fact that there is a divergence of interests, as Baroness Bowles just said, which has led to misrepresentation in respect of the role of net asset value as opposed to total shareholder return, when it comes to a shareholder assessing value. It is not a lack of consensus in the industry, it is a case of wilful misrepresentation.

***Ashley Alder:*** Thank you for the comment. We are very, very aware of those points. As I said, we are very aware of the underlying fact—it boils down to quite a simple proposition—that the underlying NAV itself is not accessible to shareholders in closed-end investment trusts, for obvious

reasons. From a board perspective right now, the question of cost disclosure would depend on the degree to which the organisation assesses many of the factors that I pointed to, in the context of the PRIIPs discussion. That is critical.

**Baroness Bowles of Berkhamsted:** Can you rephrase that? It is only for the ongoing charge that would be taken from the shareholding. Saying zero cost disclosure does not mean not disclosing costs, so it is a bad phrase. Saying, "Ongoing charges, in as far as they would be taken from your shareholding, is zero" is correct.

***Ashley Alder:*** Yes, and without getting into the technical argument in this format, I agree with the proposition that the ongoing charges are not deducted from the share price. Nevertheless, from a board perspective, it is really, really important to factor in all viewpoints, of course.

**Baroness Bowles of Berkhamsted:** So you factor in truth and lies together?

***Ashley Alder:*** Well, all viewpoints.

**Baroness Bowles of Berkhamsted:** No, you cannot have a view on whether money is taken from the shareholding. Tell me the mechanism by which the company takes some money out of the value of what your shareholding market price is. You cannot have a view on that. It is fact.

***Ashley Alder:*** I would agree that, as a fact, there is not a deduction from the share price. The share price stands alone and, as we all know, it is a component of all sorts of factors. It is a component of market sentiment and underlying performance. There is a view that the NAV drives the share price in relation to investment trusts to a very large extent, but not exclusively. I would just note that industry views differ. The reasons why they differ, and the motivations as to why they differ, we would need to understand from a board perspective. There is a question mark around the way in which cost disclosures or ongoing fees are positioned and how they are described. As I say, they are not deducted from the share price mathematically, but certainly there is a question: are ongoing charges relevant when comparing different types of collective investment schemes? As a question, it certainly merits a closer examination.

**Baroness Bowles of Berkhamsted:** There is nothing wrong if you have equity portfolios that are identical that you might want to look across, although, of course, there are different types of expenses within that. But the fact is, at the moment, there is something misleading going on that some entities are deliberately gaining from, and they are deliberately blocking retail investors from purchasing things. There is no way a retail investor can now access these investment trusts. They have to go through a more expensive way to get them, through either a wealth manager or other things. They cannot get them on the retail platforms if they are being told the truth that nothing is coming off the share price. If they are being told a lie, so they are less likely to buy it, then they still

have access.

You are saying that this is going to go on until 2027? That was on the other slide that the Investment Association showed to its members, the timeline by which the FCA will have finished doing everything. Are you going to allow this sector to continue to be killed slowly, or progressively, for another year plus? About £40 billion has been lost in the alts sector, which is not even in competition with open-ended funds.

***Ashley Alder:*** What I can give you an assurance about, and this is appropriate, is that the organisation as a whole—certainly the board and certainly I—have taken an account of all that has been said and written on this. We understand the points that have been made. We certainly understand a point that has been made about the difference between NAV and share price in the context of investment trusts. We certainly have heard different views and, as I told you earlier on, what leads to those different views being expressed may be various. My position is that it is really up to us as an organisation to assure everybody who has an interest in this topic that there will be a fair hearing, and we will consider this on balance.

**The Chair:** When will you reach a conclusion?

***Nikhil Rathi:*** Once the statutory instrument is adopted by Parliament, we would hope to bring that consultation forward fairly soon, before the end of the year. The committee will be notified in the normal way, and judging from this conversation, I am sure there will be a response. Then by the second quarter of next year, I hope, we will be able to reach a conclusion. That is the normal policy process. That depends, of course, on what is in the statutory instrument that comes from Parliament.

***Ashley Alder:*** From a board perspective, we see the consultation as being the principal vehicle in which to have this discussion.

**Baroness Bowles of Berkhamsted:** You are saying the best part of a year.

**The Chair:** I have a feeling this is not going to satisfy Baroness Bowles, but perhaps this could be pursued offline.

**Baroness Bowles of Berkhamsted:** Do you not think, actually, given the circumstances, that you should be looking at the competition aspect—or, given the involvement of the FCA, would it be better for the CMA to be doing that?

***Nikhil Rathi:*** I would agree that the previous rules we inherited from the EU were not fit for purpose. We had a debate about that. You felt that we were interpreting them incorrectly; that was never the position that the Treasury took. It has now moved forward with the statutory instruments, which make those rules redundant and put in place a new framework in the UK. We will consult openly and widely on that. That will include a consultation against all our objectives, including competition in the interest of consumers, to your competition point. We will take evidence

on all those points. We have met the IA, we have met the AIC, we have met a number of market participants, and I hear what Baroness Bowles and Lord Kestenbaum have said.

**Baroness Bowles of Berkhamsted:** I was also thinking dominant positions and those kinds of abuses.

***Nikhil Rathi:*** You are asking me to name an investigation through that question, which I would not do right now, given the nature of this hearing. But obviously, we take those competition arguments thoroughly into account.

**The Chair:** Touché.

Q7 **Lord Eatwell:** Coming back to the announcement of investigative procedures, I would like to look at the consumer interest. One thing that I was very struck by when I was acting as a regulator, was the number of times I had people who had lost significant amounts of money coming to see me and saying, "You knew, and you left us hanging out there". I was wondering what your experience is with consumers in this respect.

***Nikhil Rathi:*** It has weighed heavily on us. We had a very critical report from the Public Accounts Committee specifically on that aspect. "You, the FCA, knew this was going on, you had intelligence this was going on, indeed you were investigating a number of firms, you did not say anything. In the period you did not say anything, more consumers lost their life savings to rogue advisers". That was the critique in that situation.

That is one example. That is why in the unregulated space, where there are frauds and scams, what we are proposing is much less contentious. It weighs heavily on us, and it weighs heavily on us that those consumers may then seek to take matters into their own hands and hire their own law firms and use their own money to seek redress, when actually if they wait for our investigation, they may get a better financial outcome. But that has to be balanced against the firm interest, the market interest.

**Lord Eatwell:** One of the things that strikes me is that firms that are selling policies or whatever to consumers often have, "Regulated by" in their literature. That is deemed to give confidence. Now, surely if people are using you as a label to give confidence, they should accept that it may be that you come and bite them by saying, "We're actually going to investigate you" and telling people about that; in other words, you cannot use, "Regulated by the FCA" as a sign that one can have confidence in an investment when the FCA is at the same time conducting an investigation and not telling you.

***Ashley Alder:*** When this came to the board at the outset, among the justifications for naming, this point about early notice to consumers in the circumstances that you describe was right at the top of the list. When it came back in October to the board, again, there was a discussion in board around this, which frankly was a very powerful reason to continue with engagement with firms on what this really means. You are

absolutely right that the sort of halo effect around, "Regulated" is part of the story. It is also why the board was very, very supportive of the executive in the drive to achieve early outcomes using supervisory tools, and the extent to which naming may assist in exactly those circumstances. There are other justifications, which we have been through earlier, such as demonstrating that we are on the case and such like. But that is absolutely, in my view, a really critical part of the whole proposal.

**Lord Eatwell:** The reason that we put the issue of the independent CBA committees into the FiSMA 2023, was that that was an element of accountability. It seems to me this is an absolute classic case where you should be using that device with which you have been provided to investigate this particular entity. I can understand it is busy with lots of things, but this is a little hot potato that really should be your CBA committee's responsibility.

***Nikhil Rathi:*** We will certainly reflect on that. If I go back to the British Steel case, I think it is now a matter of public record, some consumers called our contact centre and asked, "Is this adviser regulated?" Our contact centre will not disclose that a firm is being investigated, and they simply say, "Yes, they're on the register". That consumer gets assurance by calling the FCA that they are dealing with somebody proper, while within the organisation we have quite serious intelligence that there may be a problem. This is the thing we are tussling with: what do we say? These are small firms, too, right? Sometimes these are small financial advisers. What we saw many years ago was that it was the small financial advisers that were potentially causing most of the harm in the high-risk investment arena. We hear the feedback of small firms which are very worried about impact, but sometimes their impact is what is being paid for through the levy by the larger firms. When those small firms fail, the compensation cost is borne by others.

I am really glad that we are able to have this measured conversation because that is exactly the kind of thing we are tussling with and looking at the trade-off there. I gave you the example earlier of the high-risk situation we had, which was a supervisory intervention. Sometimes there is no right judgment on some cases. You could go either way. You can get criticised either way, and it could go wrong either way. I hope through this accountability relationship with this committee and others, we can surface some of that with you, and you can understand how we are thinking about it. We are not always going to get it right. I would accept that. But I hope you can understand why we are coming to some decisions we are coming to.

**The Chair:** We have had quite a good go. We will conclude this session at 12.15 pm. There are one or two questions people still have, if we could have crisp questions and crisp answers. If we may, we will send you those questions that we have not been able to cover, and if you could reply in writing.

Q8 **Lord Grabiner:** I will be as quick as I can. International comparisons:

what I am going to do, I hope very speedily, is just summarise some bits of evidence that we have received, and I am interested in your reaction. First, we have been told that in no other G7 country do regulators publish details of their enforcement investigations before they are concluded. Secondly, we have been told by one of the major law firms that Singapore has a communications policy with a public interest framework; it publicises the opening of its enforcement investigation only infrequently, and generally only when the subject matter is already in the public domain. Thirdly, we have been told by the same major law firm that it has contacted 26 jurisdictions to inquire whether their financial regulators routinely announce details of investigations started against firms. It found that no other country made announcements in the way that the FCA proposes, although it did say that Spain, South Africa and Singapore occasionally announce investigations. We would be interested to have your reaction to that.

***Nikhil Rathi:*** We will cover this as well when we come out with an update, but the summary you have given is a fair summary. No other regulator around the world has the breadth of responsibilities we have, and we have covered the range of cases we are dealing with. We are still talking about something that is infrequent; I hope we have conveyed that point through the conversation today. We also have a different supervisory practice. What I talked about in terms of cases where, with a regulated firm, we would give it quite a bit of time, unless it is something very dramatic, 12 to 24 months to sort out the issue before we move into enforcement.

What you will see with our US colleagues, and you have seen this in the crypto arena quite aggressively, is that they move to enforcement much more quickly because they have a much more adversarial and litigious environment than us. They would issue a Wells notice, which is the start of an enforcement investigation. Typically, if a firm is listed, they may feel they need to disclose that, or if they have a list of securities, they may need to disclose that. They could well be in the public domain and in court much more quickly for the same alleged misconduct, compared with us. The US is the main comparator because that is our main competitor in the international arena, in terms of the scale of the wholesale markets we are dealing with. You have to get beneath that, to understand the whole supervisory process and the culture around litigation and investor disclosures. The SEC's investor disclosures, as I said earlier, are somewhat more exacting than ours. That is why we find our cases disclosed in the US sometimes, rather than here. But I want to make sure that we engage on those points because we have a second objective, we take it seriously, and we want to make sure that we have covered the points that were made.

**Lord Grabiner:** We would be very happy to receive a written response to that.

***Nikhil Rathi:*** Sure. The other point I would make, and I know, Lord Lilley, you felt this was a bit bureaucratic and technical, but our accountability environment is somewhat different. The frequency and

regularity with which I get asked by committees, indeed by the former Chancellor himself, or indeed by MPs, about specific investigations, there is an intensity and a regularity about that, which is not seen or felt by my counterparts in the G7, who I talk to all the time.

Another fact that the committee may be interested in is we are in the world by far the biggest exporter of data for co-operation and enforcement, by a long way because of the nature and the hub nature of our wholesale market. We are talking to our colleagues around the world all the time about how they do enforcement. We are supporting them, and they have gone public to say and acknowledge how much we support them on their investigations, as well as doing our own. We play quite an important role in the global system in that regard.

Q9 **Baroness Noakes:** You seem to have concluded that you have the power to do what you have been proposing, which is to make public your investigations, notwithstanding the quite specific provisions of FiSMA, which I understand your predecessor, the FSA, did not think allowed it to name and shame. At the time, Parliament would have taken care to have given you the powers it thought you should have had, but did not appear to give you the power explicitly to do the naming and shaming. If it had done, it almost certainly would have put safeguards similar to those that are found in Sections 207 and 208 of FiSMA. What gives you the confidence that you actually have the authority to do what you have been proposing?

***Nikhil Rathi:*** Obviously, we looked at this very closely. Given that we already announce, except in a small number of cases, the fact of an investigation—that is normal practice—we do not think that Section 348 precludes that. But, of course, you must exercise those powers proportionately. It means that the content of the statement will be very factual and very measured. We will not be going into lots of detail. It will be typically two, three sentences. For example, in the Citigroup case we said: "There has been a trading incident in August 2022. We are investigating the circumstances around that trading disruption". That does not fall foul of the legislation, given that, as I said, in eight cases already of the regulated firms, we do that already.

We use extensive public warnings already for unregulated firms where we believe that fraud is going on, and we want to make sure in anything we move forward with—no decisions have been taken, I repeat that point—that we have a proportionate process for firms to make representations. Ultimately, of course, a firm can ask for a hearing at the tribunal in private, if it is concerned about a potential decision to announce, and the tribunal would make the final judgment around that. That is an easier route for ultimate accountability for larger firms than for smaller firms, so I would not overemphasise that, but that is always available to firms. They have the protection of the courts if they need it, but I hope we would not get to that in very many cases at all.

**Baroness Noakes:** Do you think Parliament had it in mind that you could do this and thought no safeguards would have been appropriate—

unlike in all the other cases?

***Nikhil Rathi:*** Obviously, you are the embodiment of Parliament in this committee. We do this already. As I said, we do this already in eight cases. If we add two to three more a year, maybe some more in busier years, we are not talking about a huge shift from where we are right now. Parliament itself, through the committees, has regularly asked me to disclose, the Chancellor previously asked me to disclose, the PAC asked us to disclose, and MPs regularly write to us about constituency matters, asking us to disclose.

There is one point I want to emphasise. First, that disclosure is not always going to be at the outset; it may be later on in the investigation, six months or nine months in. Secondly, the other aspect of this, which perhaps is not getting as much attention, is a disclosure that we are not investigating. At the moment, we neither confirm nor deny. Sometimes it can be reassuring for firms, and indeed, it may not always be welcome to MPs or consumers or whistleblowers, but sometimes we want to be able to say, "We've looked at the matter, we're not pursuing it". We then have to be held to account for our judgments there, but we have to keep the portfolio of cases tight, and sometimes those are difficult judgments. For example, on Greensill I wrote to the TSC, it wrote to me about an investigation; there was a very significant hearing about it, I gave evidence. We were investigating, but we also wrote to it to tell it we were not when we closed an aspect of the investigation. That is important too in this discussion.

**Baroness Noakes:** It was not part of your proposal, so that is irrelevant.

***Nikhil Rathi:*** To say we are not investigating?

**Baroness Noakes:** That is not what has caused concern in the industry.

***Nikhil Rathi:*** I would respectfully disagree with you on that. Again, maybe that is the way we could have explained it, but moving away from neither confirm nor deny to denying as well as confirming is a component of how we will explain this going forward.

**Lord Hill of Oareford:** Just to clarify the point that Lady Noakes was on, for the record: you were not required to do this consultation, it was a judgment that you made. On this whole question of where the boundaries are between what you are required to do by law and own-initiative action by the regulators, this one falls into this was your own initiative.

***Nikhil Rathi:*** It was, absolutely. It was part of an overall enforcement plan, although we had had a recommendation from a parliamentary committee.

**Lord Hill of Oareford:** Yes, but then you also get recommendations from different parliamentary committees—

***Nikhil Rathi:*** We do.

**Lord Hill of Oareford:** —for instance, this one asking you to pause the consultation, which you did not. We have to be clear here that it was your decision. I am not making a judgment on whether that is right or wrong, but just factually we need to be clear it was your judgment.

***Ashley Alder:*** It certainly was. When it first came to the board, which was October 2023, as you would expect, there was a very clear discussion around the potential benefits of a shift. Again, it was our initiative. But it was also emphasised at the time that to a degree, this was responsive to numerous and different types of requests for greater transparency.

**Lord Hill of Oareford:** Again, just to be clear, we touched on this earlier: is it your view that your initial proposal was correct but you messed up the handling, or with hindsight, did you overcook the initial proposal? The chairman did something with his hands earlier on about how it started there, then it went there, and we will end up about here. Do you think you overcooked it, or was it basically right but you just messed up the communication?

***Ashley Alder:*** If I make a choice between those two, it was the latter—as in the board and the executive understood well what we were aiming at, and in particular the apparent benefits of a shift. We understood well that the shift would not involve a large volume of announcements—in fact, a very small volume of announcements. Therefore, any lessons learned for the organisation that the board would pick up, were more around how it was communicated. The phase we are now in is, in essence, a product of the initial communication, the strong reaction, other comments from others who are more supportive, that Nikhil mentioned earlier on, and where we go next. It is absolutely the right thing to do at the moment.

***Nikhil Rathi:*** I would add a slant on this, which is that there are elements of the consultation that we could have considered differently. The point around having a public interest factor looking at the impact on firms would have been reassuring for the market. In our minds, we felt that looking at integrity of the market would have encapsulated the impact on the firm, but also the wider market impact, which is sometimes what we are trading off. One firm's concern may be to the benefit of its competitors, if its competitors knew the damage the firm may be allegedly doing in a market. But we could have done that differently—as well as the one business day, which is what Ofcom does and what other regulators in the UK do, but we perhaps could have reflected on that differently at the start.

I would accept that there are elements of it which, if we had our time again, we would do differently. As I say, I have no desire as chief executive to be offside with the firms we regulate. I want to just address Lord Hollick's point. If a firm has a problem or criticism, we live in a vibrant democracy, it is quite important that it feels able to express that concern. Certainly, from my perspective, there is no retribution unit in the FCA that would go after a firm that did that. It would be a very busy

unit if we had one. I want to address that point head on. Obviously, we want to have a discussion about evidence when firms have concerns, and we can engage then.

**The Chair:** In our other inquiry looking at the secondary objective, we find that people are prepared to make comments and criticisms of the FCA and the PRA privately, but they are not prepared to do so publicly, which is what was at the root of Lord Hollick's question, and which is really quite worrying.

***Nikhil Rathi:*** Which is why I wanted to address it because I wanted to give the assurance in this forum that if any firm that makes a criticism publicly of the FCA, we respect the criticism. We will engage with it, and we will understand what the evidence is behind it. But I would not want anyone to feel that somehow my teams are going to go after them. We are a public body.

***Ashley Alder:*** It also does not help us as an organisation, as a board, to access all the information we need to make the best decisions. I would really encourage people to be candid with the organisation.

Just to echo Nikhil's point, if there is any suggestion that there was in some way a degree of retaliation or retribution; I would find that an extraordinary proposition, but if there was a suggestion that that was real, clearly that would be very serious.

**The Chair:** It is certainly real that people say that, and therefore there is a cultural issue to address, which I know that you will both want to do. I said we would finish at 12.15 pm, but is anyone desperate to ask another question? I can see Lord Vaux is twitching.

**Lord Vaux of Harrowden:** I have a question that you can write to us with the answer to, but you have been at pains to tell us that this is going to be a very small number of announcements. I assume, therefore, that you have gone back over the last five, 10 years and analysed the investigations you have done and identified the ones which you feel that you would have wished to announce. It would be interesting to go back and understand what that is; in particular, where you would have wanted to announce, what the benefits of doing so in that situation would have been and what the damage of not announcing was. The flipside of that is any examples where you would have disclosed, but actually ended up with no further action and therefore damage would have been done with the disclosure. It would just be interesting to understand, looking back, what the statistics look like in that respect. But you can probably do that in writing.

***Nikhil Rathi:*** We will give you as much of that data as we can, of the live cases and what we think may or may not be. Sometimes it may be announcement, sometimes it may be anonymised disclosure. We will give you case studies as well for you to think about as you conclude your inquiry.

**The Chair:** Thank you very much to you both. This has been two hours

of fairly strenuous questioning and we are very grateful to you for taking the time and for thinking so carefully about the questions that we have put to you. We look forward to producing our report and that influencing you in deciding what you are going to do early in the new year.