HOUSE OF LORDS

Financial Services Regulation Committee

Uncorrected oral evidence: The FCA and PRA's secondary competitiveness and growth objective

Wednesday 22 January 2025

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 Lilley; Baroness Noakes; Lord Sharkey; Lord Vaux of Harrowden.

Evidence Session No. 28 Heard in Public Questions 331 - 345

Witnesses

I: Ashley Alder, Chair of the Financial Conduct Authority; Nikhil Rathi, Chief Executive of the Financial Conduct Authority.

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Examination of witnesses

Ashley Alder and Nikhil Rathi.

Q331 **The Chair:** Welcome, Mr Alder and Mr Rathi, to this session of our committee, where we are continuing our inquiry on the secondary objective. We were very grateful to you for your reply to the letter that I sent to you just before Christmas, which we received last Friday. We have a number of questions following that in relation to the issue of motor commissions. This matter is before the courts and the recent developments on the motor commission issues would engage Parliament's important sub judice rules, which usually require the House to abstain from discussing cases to be decided in the UK's courts. However, given the importance of the issues raised by this litigation, the Lord Speaker has granted a waiver of the sub judice rule to enable us to discuss this issue in this public evidence session. I know that Members will use their discretion and avoid getting into matters that could cause difficulties in relation to the current court case.

Lord Grabiner: Good morning, gentlemen. I will just set the scene. First, thanks for your letter of 17 January, responding to Lord Forsyth's letter of 20 December. You helpfully draw our attention to the provisions in the rulebook CONC and your related governing principles. We know that the October decision of the Court of Appeal is on its way to the Supreme Court—it is scheduled for a hearing at the beginning of April, I think—and that it has been expedited. That common law case is concerned with, and only with, the common law. It is not concerned with the interpretation of the FCA rulebook. Is that your understanding as well?

Nikhil Rathi: The Court of Appeal judgment did talk about our rules, but the burden of the judgment was in relation to the common law. Given the interpretation around the common law, our rules are subservient.

Lord Grabiner: I agree; I understand. The Court of Appeal judgment turns, as these cases often do, on highly fact-sensitive points. For example, the consumer goes into the dealer and is contemplating buying or hiring a car—possibly taking it on finance or possibly buying it outright. Is the broker-dealer the agent of the finance provider? That is a factual question as well as a legal one. To what extent does the consumer rely on the advice of the dealer—for example, on whether to seek finance as opposed to buying outright? That is a factual question and depends on the conversation that took place at the point of sale. Next, what, if anything, did the consumer ask the dealer about the commission arrangements? Again, this is a factual issue. If you look at the Court of Appeal judgments, they investigate all those questions in the three cases that they were concerned with. We know that the FCA banned discretionary commissions in motor finance in 2021. Did you consider the possibility of banning commissions completely?

Nikhil Rathi: The ban in 2021 followed a market study that had taken place in the years before Covid; that was published and part of the consultation. In considering the response to that market study, the judgment we took was that the most significant harm to consumers was around the discretionary commission element of the way in which this market worked, where firms were potentially adjusting the interest rate based on the level of commission they were receiving. We did not judge that a market-wide ban across the board, of all commissions, was the proportionate way forward, not least because this is one of many consumer credit markets where commissions are used—not just here but in many other parts of the world. So the most significant harm, we felt, was in discretionary commissions; that was where we took the steps we took.

Lord Grabiner: The way you dealt with the non-discretionary commissions—I will call them fixed commissions so that we both know what we are talking about—was in those CONC provisions to which you have drawn our attention. I want to refer to CONC 4.5.4R. Do you have that in front of you?

Nikhil Rathi: I have a summary.

Lord Grabiner: Yes—I have your summary in front of me; it was in your letter, very helpfully. The provision provides that brokers are required to disclose "in good time" the likely or known amount of commission, fee or other remuneration that they will receive "before a regulated credit or a consumer hire agreement is entered into". It adds these rather critical words: "at the request of the customer". So, if the broker-dealer is getting a commission but is not asked about that by the consumer, there is no problem under these rules.

Nikhil Rathi: The rules that you allude to were an evolution of rules that were in place previously, including rules that the OFT had in force before we took over responsibility for the regulation of consumer credit in 2014. We focused on disclosure of the fact and nature of the commission, not on the amount, unless the consumer explicitly requested it. That is correct.

Lord Grabiner: But it does mean that, if the customer does not request the known or likely amount of commission, fee or other remuneration received, there is no obligation under the rules to provide that information.

Nikhil Rathi: We focused, as I say, on the fact and nature. We did not put an explicit obligation across the board because we did not think that it was a proportionate step. As you have described, Lord Grabiner, there are other fact-specific circumstances and other bits of legislation, including the Consumer Credit Act and common law, to which the Court of Appeal has looked. Our rules always sit alongside the underlying statute.

Lord Grabiner: I understand. Let me put it slightly differently. If the

words “at the customer’s request” were not there, there would be an obligation, under that rule, to disclose the likely or known amount of the commission to the consumer, would there not?

Nikhil Rathi: Again, we took the view, following the market study and extensive consultation, that the fact and nature of commission was appropriate to disclose, but not the exact amount in every single circumstance. Obviously, commission arrangements are used very widely across financial services and other markets, and it would have been a very significant step at that time.

Lord Grabiner: I appreciate that and I appreciate that I am asking you what may be a legal question—I apologise for that straightaway; it is part of my make-up, I am afraid. The truth is that it looks as if, if those words were not there, the dealer would have an obligation to disclose the amount of any commission he was going to receive.

Ashley Alder: I think that the root of the FCA’s approach was a declaration around conflicts—that is, does the broker-dealer have a conflict? If so, they should declare it. That was the root of this rule. As we have seen from the Court of Appeal judgment, that took a very different approach—you are quite right to say that it was fact-specific—which imported concepts of fiduciary obligations. Our rules did not do that, to be clear; they were very much founded, in essence, on whether a conflict is operating in this circumstance, and saying that, if there is, declare it. There is clearly a difference: one is a fact-based analysis under the common law and, in particular, the import of the fiduciary aspect of this, which is distinct from the way our rules operated.

Lord Grabiner: The problem arises because, if the customer gets involved in a discussion whereby he is seeking advice about what financial deal he should do—“Should I buy? Should I take a financial deal? If so, on what terms?”—once he gets into that conversation, he might be getting himself into the fiduciary relationship that you mentioned a moment ago.

Ashley Alder: Potentially, depending on the facts. As I say, it has a common law root, as articulated by the Court of Appeal, which is of course now under appeal.

Lord Grabiner: That is what gives rise, on the face of it—I do not know whether you agree with this—to a direct conflict between that rule and the decision of the Court of Appeal, because the effect of the Court of Appeal’s judgment is that, once that conversation takes place and continues, giving rise to the duty to make a full and frank disclosure, failure to disclose the commission or the amount of the commission is what gives rise to the concerns of the Court of Appeal. I am suggesting that that does reveal a gap between the FCA rules and the common law rules, as enunciated thus far by the Court of Appeal.

Nikhil Rathi: Obviously, we will have to see what the Supreme Court says. It has obviously taken the view that there are issues of sufficient importance here for it to take the case.

Lord Grabiner: Certainly.

Nikhil Rathi: Our rules are one component of the overall legal framework. There is also the Consumer Credit Act. There are elements in that Act—Section 140A in particular—around issues of fairness. The Treasury is the overall guardian of that legislation. It has applied to intervene as well; you may have seen the statements that it made this week. Our rules will always need to be seen alongside the underlying statute—the Consumer Credit Act—and, of course, alongside common law too.

You are right that the Court of Appeal has taken the interpretation and given legal guidance on this point further than was the case previously in terms of any judicial guidance. We will see whether the Supreme Court agrees with that or not.

Lord Grabiner: So you agree, I think—I do not want to unfairly represent you—that, on the face of it, by reference to the Court of Appeal judgment, and bearing in mind that the Supreme Court may take a different view, there seems to be a disjoint between the rules and the common law position.

Nikhil Rathi: I have said previously, including publicly when speaking to investor analysts, that, when we made our ban in 2021, it was not predicated on a common law interpretation as enunciated by the Court of Appeal. One of the reasons why we sought to intervene in the Supreme Court case—we will see whether we get permission to do so—was to explain how we see our rules fitting into the overall framework. Obviously, other people are intervening as well; we will see where the Supreme Court goes.

Lord Grabiner: But you tell us in your letter that you did not take legal advice when those rules were formulated.

Nikhil Rathi: We did not take legal advice on the specific issue of a disinterested duty. There was no such case at that time as the one that is before the Court of Appeal. It was not perceived to be a significant legal issue among the range of issues that we were considering in the market study and the consultation. Obviously, the Court of Appeal has taken the judicial guidance further with the latest case. It has done that in the light of conflicting interpretations in the lower courts around this particular issue. The Supreme Court will settle it.

Lord Grabiner: In hindsight—I know that hindsight is a wonderful way of looking at life—do you think it might have been sensible to take legal advice?

Nikhil Rathi: The board, at any point when it is making rules, will look at the whole range of legal issues that we are dealing with. As I said, at that point, this was not coming up as an issue of significance, despite it being consulted on very widely. So I do not think that this interpretation was very prevalent at that point. As I said, we will see where the Supreme Court goes with this and whether it agrees that this was an issue. You will have seen that the Treasury has sought to intervene as well.

Lord Grabiner: Commissions had come up, had they not? You banned the discretionary commission, so you had given it rather careful thought.

Nikhil Rathi: Given the issue of conflicts, as we set out, our view was that the most significant harm was discretionary commissions and that what was important was the fact that a conflict was disclosed. It would have been quite a broad brush and very significant intervention to have sought to require disclosure across the board, potentially in all consumer credit markets—and, going further, if you take that principle all the way to its logical conclusion, in retail financial services markets more generally. That would be a position that I do not think many developed jurisdictions take in terms of where their markets operate.

Lord Grabiner: Can I ask you about one other related issue? I am sorry to go on for so long. On the relationship between the FOS and the FCA, there is an MoU in place, but the approach adopted by the FOS—the ombudsman dealing with complaints from consumers—has significant rules that are relevant here. For example, a substantial 8% payment power is given to the ombudsman in respect of consumer damage claims; it carries an 8% commission with it. Do you want to say anything about the way in which the ombudsman approaches this problem compared to the way in which, for example, the FCA or the court would approach it? They are separate issues.

Nikhil Rathi: We will say more about this in our intervention in the Supreme Court. The statutory framework for the ombudsman is established by Parliament. The ombudsman considers what is fair and reasonable in all the circumstances of the case. It will of course look at our rules, but it also looks at broader legal provisions because it is not just our rules that govern consumer financial services. It will look at the Consumer Credit Act and other jurisprudence that will be established.

The 8% figure is, I believe, set by the Lord Chancellor and the Ministry of Justice to determine what the appropriate interest rate should be if redress or some compensation payment is required. That is, understandably, a topic of discussion and debate, but it follows a precedent and a provision set by the Government.

I think the question you are asking—it is an important one—is: is there alignment, consistency, predictability and certainty about how all these different parts of the system work? Many of the components of the system have come from legislation, starting from the 1970s, with different bits added on and amended through the years. Then you have

different judicial interpretations. There is an issue there, which the Chancellor highlighted in the Mansion House speech, around how this all works together in a way that gives investors confidence.

I will add two further points. First, one of the parties to the FOS case—one of the banks—judicially reviewed the FOS on that decision. It was not successful, and that is now being taken to the Court of Appeal. If firms disagree with the FOS decision—if they think that it is retrospective and goes beyond what they think is reasonable—they have rights before the courts to challenge those decisions. One of the parties has done so.

Secondly, the "fair and reasonable" test in the statute is deliberately a broad test set by Parliament, which gives the FOS considerable discretion to use its judgment. As the FCA, we cannot intervene in specific cases, but we look at things that are system-wide. We have been clear in our commentary on motor finance that our objectives are different from those of the FOS. So, we will have to assess any intervention, should we get to that, against all of our objectives, thereby protecting consumers who may have been subject to wrongdoing in the past while making sure that the market works well for consumers in future. That is a different balancing act from what the FOS is tasked with doing.

Lord Grabiner: The flexibility to which you referred is not available to a court. For example, if the consumer has made a court complaint, they will not have to satisfy those requirements. Nor will the 8% rule apply: it does not apply to a court case, only to the ombudsman's jurisdiction.

Nikhil Rathi: As I understand it, the rules around the 8% also apply to the manner in which courts judge redress to be paid. The courts will be looking at things against the legal framework.

Q332 **The Chair:** Where does this leave firms that were complying with your rules? I had a look at your website yesterday, where you encourage people to make claims against firms that were compliant with your rules and are now in a position where they do not know what their future liability might be. What will you, as the regulator, do about that position? Listening to some of your answers, there is an implication that you think that these provisions on commission disclosure may well go beyond motor finance into leasing in other areas. Is that the case?

Nikhil Rathi: It is important to talk about compliance with the rules. First and foremost, an argument has been made that the intervention on motor finance was retrospective, seeking to apply the ban on discretionary commissions to contracts that were undertaken before. What is being tested in the discretionary commission element is whether firms were complying with the rules that were in place at the time. That is what was tested when the FOS case was judicially reviewed. The bank did not succeed in that judicial review; the court said that that was a reasonable determination based on the pre-2021 rules.

What we have said is that, if consumers are concerned and feel that they were not treated fairly, the first step is to raise that with their lender.

There are rights in the system then to take that to the ombudsman, if they are not satisfied with the way the lender deals with the issue. We also took the step at the start of last year—it was a strong intervention—to pause the complaints in relation to discretionary commissions, in order to allow us to look at the potential scale of the alleged breaches of rules that were in place before 2021 and to allow some of these court cases to proceed all the way through to the Supreme Court so that we understand where the legal position is. Conflicting judgments were coming through in the lower courts and the county courts on some important points of legal principle.

We have gone further in the light of the Court of Appeal judgment and also paused complaints in relation to fixed commissions, because the Court of Appeal took a broader view of the issue. We have paused those complaints until December, too—again, to allow for the Supreme Court to give us some final legal certainty on some of these issues.

On your final point, Chair, part of the reason for broadening it is that there are potentially wider implications to this. I would not want to overstate them, but there are potentially wider implications if you take this legal interpretation and apply it from first principles to other markets. It could go wider; I would not want to scare the horses and say that that is definitely the case but, clearly, that is a potential issue. We would articulate that should the Supreme Court wish to draw on our expertise.

The Chair: I do not want to spend a lot of time on this but, last week, we heard evidence from Andy Briggs of Phoenix Group; he is not involved in motor lending, of course. He told us that, when he went to the United States to see investors, their first questions and concerns were about the impact of regulatory rules that were being applied retrospectively, which of course relates to the issues that we have just been discussing. Are you concerned about the implications of this and the kind of experience he told the committee about? He described it as a regulatory premium being taken against investment in the UK as a result.

Nikhil Rathi: Since we made the announcement at the start of last year, and in subsequent announcements, one of the things we have done is make sure that we hold a briefing with investor analysts in order to make sure that they understand what we are doing and why, so that they can factor that in, and to explain how the UK legal framework works.

I have already made the point about retrospectivity, because I think there is a perception around it, but what is actually being assessed here is whether the rules at the time were being followed. Of course, any firm that feels it is being treated retrospectively has the right to go to court. The court system is there to protect everybody, not just consumers. In the case of the one firm that did so, the courts did not uphold their judgment.

The complexity of the system that we have in the UK—how statute, common law, regulation, claims management companies and all the

different actors work together—is difficult to explain. We are doing some work on the redress framework, as the Chancellor announced at Mansion House. There are things that we can look to do to achieve greater alignment, but my feeling is that some of this goes back to the choices in the underlying statute and the breadth of discretion—for example, in the case of FOS, around the fair and reasonable test—and other things in the underlying law. Of course, the Treasury is also reviewing the Consumer Credit Act. It started that review in 2022; some of this may be germane to that review as well.

The Chair: Are you saying that legislation is needed?

Nikhil Rathi: My feeling is that there are things that we will be able to do to ensure that we can spot issues better and act earlier if we see significant complaints come forward. The Financial Ombudsman Service is introducing a charging regime for professional representatives who make large numbers of complaints, to make sure that those are done in an orderly fashion, but we have a multilayered system and, of course, the common law is not within our gift. Ultimately, those are all matters for the Government and Parliament.

Q333 **Lord Sharkey:** I will change the subject slightly by asking about CBAs. The Cost Benefit Analysis Panel recently published its report on the FCA's use of CBAs, which said, "The FCA's use of CBA is currently designed closely around meeting its minimum statutory obligations". It went on to say that the panel noted that the statutory minimum to produce a CBA on new rules and rule changes risks leaving important gaps in the policy's economic analysis. It said that the gaps are, first, in understanding the cumulative impact of policy changes; and, secondly, in understanding that impactful policy changes such as guidance may not undergo a CBA.

What are your reflections on that? What reassurances can you provide that the FCA does in fact value the importance of CBAs? What will be done to take greater advantage of CBAs going forward? Are there any limitations on applying the CBA to the FCA's general duties?

Ashley Alder: First, the Cost Benefit Analysis Panel is relatively new. It is really welcome—not least because it is populated by experts, which is often a good thing. Secondly, the panel also made a point about the stage in policy-making at which a CBA might be conducted. The statutory minimum is basically that, when we propose a change in a consultation at that stage, we will accompany it with a CBA.

We will look at the question of whether a CBA should also be applied to guidance. That has not come back to the board at this stage, but we will certainly have a look at everything in the report. From my perspective, one of the most important comments made by the panel was the comment about the point at which a CBA might be conducted. You might recall that, in the report, there was a question about CBAs and options, including on at what stage in policy-making you should apply a CBA to those options—early, mid-stage or end-stage—in order to help you decide which one to pursue.

The question about cumulative impact is quite a hard one. We will discuss it with the CBA panel. Working out what subset of rules we are talking about, in a cumulative sense, applying to what set of circumstances—as well as the cost-benefit analysis and methodology applied to that—is quite a hard nut to crack technically. The panel understand that, I think. It does not mean that it is at all offside as a topic to discuss.

My approach to the report as a whole is that it was really interesting and valuable because it raised important issues. We will have to determine questions around practicality, in particular—the question about when CBAs fit into the policy-making timetable also needs to be looked at—but it is all valuable.

Lord Sharkey: Do you think there is a case for saying that the application of CBAs is too narrow? Obviously, I am thinking about the subject of our current inquiry and whether significant changes, or proposed significant changes, should themselves be subject to CBAs—no matter that they are neither rules nor guidance.

Nikhil Rathi: That is an area of legitimate debate. It is coming up right now in the context of some of the Mansion House reforms, where there is certainly a government desire to move at considerable speed. One of the issues that comes up is that, where a measure is deregulatory or perhaps lowers standards, there is sometimes a desire to go incredibly quickly and not always include CBAs because there is a sense that you want to get the system moving very fast.

There is a legitimate area of debate here in terms of how far we go. We have been saying that, on some of those measures, we absolutely would like to go fast, but there are now processes that we need to respect, including the CBA panel, and it will take a few months extra to get that done. We are broadly aligned with where the PRA is, in that we are doing similar things. There is openness on our side but it works both ways because some of the deregulatory things could create process issues.

Lord Sharkey: I am a little unclear about whether that was a yes, a no or a perhaps. At the moment, as I understand it, the obligation to conduct CBAs is limited, in essence, to new rules or significant changes in rules. My question was about whether you see merit in extending the CBAs' ambit to things that are neither new rules nor guidance, such as the proposal to name and shame.

Nikhil Rathi: We have covered that in our evidence before you, and we have put out a further consultation and laid out significant data. There are pros and cons.

The Chair: You refused to do it. We asked you to do it and you refused.

Nikhil Rathi: We have provided very detailed numbers as to where we think the impact would be and the number of cases involved. Ashley may want to add a bit more on the board's thinking around that because, obviously, we have thought about it carefully.

Wherever we go on CBAs, there is some judgment to be made and there are some thresholds to be determined. Of course, we have respected where the legislation has landed on that. We publish extensive data around a range of our other policy measures, as well as other metrics around our outcomes.

The point I was making, Lord Sharkey, is simply that there are pros and cons. Let me give you an example of one the things that we are sometimes asked to do super quickly. The mortgage charter was introduced last year incredibly fast—within 24 to 48 hours—because there was an impulse to move fast. That was a significant intervention in the entire mortgage market. It would not have been practical, in those circumstances, to have paused the whole thing in order to allow for a full examination by the CBA panel. There was strong cross-Parliament consensus that something needed to happen there, so we moved incredibly quickly.

There will always be choices around this—particularly in the environment we are in right now, where we are looking much more at peeling back the rulebook rather than putting on new rules in this next phase of time. Some of those will be significant changes, and there will be a choice to be made about how fast we can go.

Lord Sharkey: I take the point about deregulation and the implications of that, but—forgive me—I am still not entirely clear why you appear to be resisting the notion that we should have had a CBA on the naming and shaming proposals. It was not a question of speed. I understand your example, but it does not apply in this particular case. So the reason for not wanting to do a CBA still seems elusive to me.

Ashley Alder: In the context of the naming proposals, you will be aware that things have moved on quite a long way; we are now in the middle of a phase 2 engagement with industry and others on that. The approach that was taken was certainly cited at the board, particularly after the initial strong reaction, which we are all aware of. Given that this was an operational proposal, essentially, as distinct from a rule-making proposal, it was interesting because, as you know, it was, as we would put it, an incremental shift from an exceptional circumstances of public interest test that we would apply operationally.

The point I am coming to is that it was accepted by the board that, certainly after that initial reaction, the right way to develop this, principally, was through engagement and consultation with those principally affected: firms. We did not necessarily believe at the time that a traditional CBA, assessing costs around benefits, was necessarily the right tool—or a useful tool—to use in that context.

More broadly in relation to CBAs—Nikhil has made this point—there are circumstances in which CBAs can be relatively straightforward. There is often a point whereby, when you apply CBA methodology, the costs are

relatively straightforward to land on. The benefits are often very difficult to cost. That is quite fundamental.

The possibly important point is about the issue of speed, agility and difficult choices. Perhaps I am jumping ahead here but both we and the Government have used the word "trade-offs" in the context of our reply to the growth remit letter. More recently, we have pointed out some practical proposals and ideas around that. One of them relates to mortgages. The fundamental point concerns the degree to which it is or is not legitimate to think about a relaxation of affordability requirements. We have been very clear that that could result in a high level of default. If you go back in history, you know why this was put in place.

Applying a CBA to that circumstance could be very important as a part of the totality of what we are doing here, not least because that sort of policy is absolutely critical. That is where CBAs may play an important role, as distinct from operational decisions such as naming, in the context of enforcement.

Lord Sharkey: I will certainly come back, perhaps in some other forum, to mortgage prisoners and affordability tests, but I make this point: it seems clear, at least now, that what was proposed, at least initially, could have had deeply disturbing effects in the marketplace. Even if we acknowledge the difficulty in reading the output of a CBA with total confidence, the attempt to do it when there is a likelihood of major changes being brought about, whether by rules or by some other method, seems to me to be important. Really, my question was: do you agree with that?

Nikhil Rathi: One of the things we have acknowledged is we could have put out significantly more data around the thinking there. The latest figures on enforcement are that there are 39 existing regulated firm investigations, roughly 23 of which are already public in different ways. A number are about to become public. We have said that there are seven that are not where we think the public interest test would be engaged. One of those is a firm in administration; others are the subject of significant consumer or parliamentary interest.

We have also said that our intention is not to do this for existing cases—that is illustrative to give some sense of the numbers—and to incorporate in any individual judgment a fact-specific, case-specific analysis of the public interest test, as we would see it, as well as any representations that we receive from a firm. We must make sure that all that is weighed up properly and, of course, we must report against it.

We have sought to respond to that feedback and to make sure that there is more data out there. There has been constructive engagement with trade bodies on behalf of the industry and consumer groups, too. So, your general point about putting information out so that people can understand our proposals—that is, putting out as much data as we reasonably can so that people understand where we are coming from—is

a fair one, I think. Although we will not get everything right every single time, if you look at the scale of the information we put out there, in terms of both metrics and data, you will see that we are at the upper end of what you see in terms of global market regulators, if not right at the top end in many cases.

Q334 **Lord Eatwell:** I would like to take us to the secondary competitiveness and growth objective. One of the issues that has emerged in our discussions of it is that the word "investment" is used in quite different ways in financial services firms than it is, for example, in national accounting data. Firms have told us that they invest millions in the UK economy but what they actually do is buy assets in the secondary market. They do not create new assets or invest in the creation of new assets. I know that it is argued that a liquid secondary market encourages investment in the primary market, although the growth of private listing seems to be moving in the opposite direction from that. My first question is: do you have any data that would allow us to differentiate financial services' secondary market investment from primary market investment?

Nikhil Rathi: One of the competitiveness metrics that we agreed with the Treasury last year, particularly in relation to equity markets, was the number of new capital raisings. So there is data that we can produce—it is published—on the number of new IPOs and the amount of capital that is raised, both in a primary sense, with a new company coming in, and through existing companies raising new capital.

Other than that, in terms of new investment infrastructure and things that are in private markets, we would lean on ONS data because, of course, we do not regulate everything and we do not have any sort of proprietary source of data. That is what the national statistics body would look at: the overall capital formation in the economy. That is what we would lean on.

I think the point you are making is about what we are going after when it comes to the secondary competitiveness objective. The letter that I wrote last week to the Prime Minister, the Chancellor and the Secretary of State, which we published on Friday, was split into different categories. This goes to your point. Part of the work we are doing is about unlocking investment: we have made far-reaching changes to the listing rules and we will reform the prospectus rules in a very radical way, potentially, later this year.

There is an interesting question about risk here because some of the firms are not, I think, as up for risk as we potentially are. I note our work on pension funds as well.

However, there is another component of competitiveness: the financial services industry is, on some measures, around 10% of our economy. It creates significant jobs. It is a big component of our trade surplus. The trade surplus in financial services has gone up from £67 billion in 2020 to £92 billion in 2023. When some of the firms talk about investment, they

are talking about investment in the infrastructure and jobs in the UK to support that trade surplus and export industry. That may not be about investment in infrastructure or new companies, but it is driving tax revenues in the UK and driving our trade surplus, which is also part of what we are doing in terms of extending our work on trade promotion and so on. So it is good that you are asking us this, because it tries to separate out all the different components of how we can support growth and competitiveness using our different tools.

Lord Eatwell: Thank you for that. I was going to come on to ask what particular measures you felt would appropriately increase real investment—let us call it that. It need not be just in infrastructure; it could be a start-up doing its second-round funding. One thing we have heard in this committee is that almost all second-round funding comes from the United States, and that the UK financial services industry is being truly delinquent in this respect.

Nikhil Rathi: I would be happy to share with you our thinking on that. We have done a number of things. With the previous Economic Secretary to the Treasury and the Governor of the Bank of England, I chaired a productive finance task force. One recommendation that came out of that was the establishment of a long-term asset fund structure to enable DC pension funds to invest more smoothly in scale-up companies and in infrastructure. Previously, it was hard for them to find the right vehicle that was consistent with all the different regulations they had to comply with and consistent with their fiduciary duties. We now have a number of those funds established by significant investment managers investing in infrastructure and start-ups.

In our letter to the Prime Minister, we said one thing that we would like to do more. When you have a new company—we are the largest centre for fintech in the world outside the United States—one issue that can be difficult is that you have a business plan and a regulatory plan, but it is subject to the finalisation of your capital raising. Of course, we will not let a company through if it has not got the right financial resources to become regulated, but we have said that what we will do more often is say to that start-up company that we are minded to approve. It can take that to its investors and then, once it has secured the capital, it gets the approval. That gives it a bit of a direction of travel moving forward.

Then we have said something else; if the Treasury agrees, this would require a bit of a tweak to legislation. Our threshold conditions that we have to hold companies to account for are set in legislation. Sometimes, start-up companies struggle to meet every single aspect of the threshold conditions. We have asked the Treasury—I think that it is open to having a conversation with us—whether we can have something a little more flexible. This is a bit of a simplistic analogy, but it could be like an L plate or a P plate for driving. We would allow some people in with limited permissions for a certain time and give them the chance to get going, but if they do not then meet the standards after whatever time we agree—six months, a year or 18 months—we should get them out of the system.

Giving a bit more space for innovation brings risk with it—that is the conversation. The Prime Minister and the Chancellor have been very constructive about this. It is about saying, "If we do that, we cannot guarantee that all those will work"—sometimes, particularly in the consumer space, harm occurs—"so is that something you are willing to give us cover for and accept, and that we can then move forward with?"

Lord Eatwell: That is very interesting. I want to ask about the proposed pensions reform in this respect. Some argue that the 1978 pension reform in the United States, which allowed pension funds to invest in alternatives, led to the creation of the American venture capital industry. Do you see similar relaxations here, or would you encourage similar relaxations, with respect to alternatives in the pension fund sector?

Ashley Alder: Your initial question, about different uses of the word "investment", was a good one; it goes to this point. Nikhil has explained that we are actively posing questions around that end of the market—start-ups, et cetera—where we can lean in with our rules to create a more conducive environment, but not without risk. It is that area. However, there is a conversation that dates back some time now—again, Nikhil and his team have leaned into this publicly—which crosses into the question of pension funds. That is one part of a much larger conversation and set of proposals. Some have happened, such as listing rule changes, and some are happening, such as PISCES, which is the ability for sections of the public to have access to private company shares under a different system.

On the demand side, there is a whole set of interlinked proposals at various stages of development. One of them is around the ability of pension schemes, under a value-for-money framework or set of expectations—they query whether they get larger, which obviously is an ambition—to have the capacity to invest across a broader risk spectrum, including in the way you describe. We changed our rules in relation to pension schemes' ability to interact with long-term asset funds, which are explicitly relatively illiquid; that describes the sort of investments they make.

Part of this—I know it sounds ambitious, because it probably is—is providing retail investors and the public at large with better tools with which to engage and then to achieve better long-term returns. At the heart of that is a new approach to advice and guidance, which need to be affordable but commercially viable for those providing them.

That set of initiatives interlinks around your initial question about driving investment and mobilising savings into productive assets, a proportion of which would be expected to be in the UK. There is another debate, which is not really for us, around home bias in relation to that. That is really important.

On the forward-leaning piece around how we treat fintech and other firms that are coming into our perimeter and want to get going, it is absolutely

legitimate to have an informed conversation and debate about a change of approach, which will import some risk. We have been really explicit that that is the case. As you might expect, from an FCA board perspective, this is a topic that occupies a fairly high degree of concentration.

Lord Eatwell: Yes. When something goes wrong, you will be blamed—because something will go wrong; that is what risk is about.

Ashley Alder: If you read some of the media reports around this topic, what they are saying, in essence, is, "It's all very well for you to embrace risk". That is one reason why, in our letter of Friday, we wanted to give some clear examples—not just one but a number—of what it might look like in practice. Theory is fine, but practice is really important because it is those specific examples that generate a better debate. You are absolutely right: the media must say, "When it goes wrong, all that discussion will be largely irrelevant because you will have to answer on the thing that went wrong". Nikhil mentioned, and we put in our letter, a question about the metrics around tolerable failure—that is, what does it look like in practice? That is a perfectly legitimate question to ask, because we need to move forward on what we are suggesting with a high degree of consensus. That is where we are.

The Chair: On the point of examples, you might want to look at the evidence that Andy Briggs gave us last week. He gave the specific example of someone who had £50,000 invested with him as a pension. They wanted to cash it in, because they wanted to buy a car, but he had to go around a huge rigmarole because you are not allowed to say to them, "Actually, it might make more sense for you to take £10,000 because, if you take £50,000, you will pay more in tax". He explained how they were not allowed to give that advice. To my mind, that is a classic example of ridiculous regulation that is actually against the consumer interest.

Nikhil Rathi: The threshold for requiring advice on pension withdrawal is set by DWP, and the monetary threshold is set by it. We see a number of these cases. Also, the world has moved on. There has been inflation recently and different people have different circumstances, so there is a case for looking at that threshold. That is one thing that the Government are thinking about in the broader sweep of—

The Chair: But is it not your job to promote change of that kind and, if not bully—that is too strong a word—then push the Government into making those changes?

Nikhil Rathi: It is our job to inform the debate but also to implement the law once the Government and Parliament have decided it. That is the law as it stands right now, and we have to make sure that people comply with it. But, as I think you have seen from a number of ideas we have put forward, we have said that there is a whole range of things that we can do to support simplification of the system. We are very engaged in

the debate on pensions and on capital markets, and we are leading the debate on listings, following Lord Hill's work on prospectuses.

I have said publicly that, now that we have the secondary competitive objective, it is helpful—I personally find it quite liberating—because it has opened up an ability for us to have this crunchy discussion about risk appetite with you, the Treasury Committee and the Government more generally. We can try—you will never get a 100% consensus; Parliament is a naturally very diverse place—to get a good understanding of the guard-rails within which we can operate.

Mortgage affordability is the most acute example of that, where we have had very low numbers of repossessions. Some people would say, "That's a really good thing. You've done a good job through the cost of living. You've kept people afloat". Others might say, "Actually, that's an example of where you've been too restrictive". We have about 1,000 repossessions a quarter. If we relaxed lending rules, you could see that number go up to 1,500 or 2,000. You cannot do both: you cannot relax the rules and have no defaults. The question we are asking is: what is acceptable politically?

The Chair: It seems rather sad that the chief executive of a large company comes to this committee and gives examples like that, and action is not taken to do something about it.

Q335 **Baroness Bowles of Berkhamsted:** I have two questions. First, going back to the motor commission issue, do you know about the advanced commission arrangements, whereby commissions are paid in advance before any orders are taken, on an expectation of a certain level? If so, have you considered that? Is it an additional conflict of interest?

Nikhil Rathi: I will have to come back to you on the specifics. Car manufacturers have a range of commercial arrangements with dealers, and that is one of the differences of this experience, compared with, say, what happened with PPI, which was a somewhat more homogeneous and standardised product. The variation in relationships is vast. This goes back to Lord Grabiner's question about the fact-specific nature of some of these arrangements. Some have zero commissions, some might have advanced commissions and some have different structures. All of that is why we paused—to have a good look at all this through Section 166, and then come to a view about what we think is on the right side of the line and what is not, subject to what the court says.

Baroness Bowles of Berkhamsted: It would be good to know whether you have been looking at that one, anyway.

Moving on to an issue that we have discussed before, we continue to hear concerns from industry about the FCA in particular not having sufficiently large technical expertise to deal with issues. If I could say something about cost disclosures, it reared its head in that within the FCA.

As we have discussed before, there are ways you could deal with this.

One is secondments from the private sector, which I think we asked about before. Then there is increasing the number of appointments of practitioners in your recruitment. I wonder whether there has been any advance in doing that, because the industry would be happy to pay a little more to get the right people. Are there any figures from the last six months of your recruitment on the relative numbers that you are getting from practitioners versus from the consumer sector?

To my knowledge, it has also been raised that there are concerns, even when it comes to consultation responses and responses to all kinds of things, that there is often a blanket response from the FCA if a point is raised and not everybody agrees with you. One never knows who is not agreeing with you—even the nature of them, or the specific nature of the complaint. Negotiation or discussion around a consultation is impossible if you do not get feedback to the industry about what the concerns are, other than somebody saying, "This looks like the best way", and the response being, "Well, no, because somebody else disagrees". How can you open up a little more to explain what is behind those kinds of refusals?

Nikhil Rathi: I am very open to feedback and always have been since I became chief executive. To give you some data, of our top 50 leaders, around two-thirds have had direct experience in a financial services firm or a professional services firm, including myself. Over the last few years, we have recruited extensively from a range of backgrounds, particularly when we expanded in Leeds and Edinburgh. We have moved from having around 2% of our workforce outside London and the south-east to around 10%. We have drawn extensively from the professional financial services industry in Scotland and in Leeds.

What is also important in terms of our capabilities and where we have built—like any large organisation, we have to keep building—is that it is not just about financial expertise. The big area we have to keep working on is data and digital expertise, because of the blurring of the boundaries between what financial services are doing. They are becoming increasingly digitalised, so we have invested hugely in data scientists. One of the reasons we went to Leeds was the strength of its universities in digital courses. We have secondments under way in a number of areas and we are open to those ideas. We draw on our practitioner panels, too.

I am sure you will get a range of evidence, and there will absolutely be some who are concerned about the level of expertise. We also know—I followed some of the committee's evidence sessions—that some would say that, when it comes to expertise, we are up there towards the top of the world, alongside the US, compared with other regulators. Some of the capital markets firms that came here have said that.

Some 8,000 firms responded to our practitioner panel survey, and 94% of fixed firms said that we do a good job of ensuring that markets function well. If you look at some of the big things we have done, such as the transition of Libor, which was probably the biggest financial stability

risk of the last few years, you will see that that was led by the FCA globally. I did a piece with the president of the New York Fed when we completed it. Not many market regulators around the world would have been able to do that.

Some of you, including Baroness Bowles, were at the capital markets conference we held in October. We brought together some of the most significant players from New York with all our regulatory counterparts around the world to have a really open discussion around markets. All those people came because a certain degree of expertise and global thought leadership on these market issues comes out of the FCA. That is not to say that we cannot keep improving, but I would not subscribe to the general view that somehow the expertise across the board is deficient. Ashley has worked globally.

Ashley Alder: I have. I would fully endorse that. Without blowing my own trumpet too much, one of the reasons I was attracted to come to the UK to do this job was precisely that I saw that the FCA is a global thought-leader across all sorts of dimensions, not only capital markets elsewhere. That is simply the fact, and it is recognised throughout global financial centres.

More specifically, when I joined nearly two years ago, I attended an early Treasury Select Committee. One of the issues was the very high level of turnover within the organisation and a programme to grow it and recruit. I think I said at the time, or possibly in the meeting afterwards, that that clearly meant that we had quite a substantial training and integration challenge around a large number of new people. When I was interacting with firms at that time—it was 2023—they tended to say that, because of that, they were seeing a degree of churn around which supervisors were allocated to them. That is a fair comment. A firm would want to establish a relatively long relationship with supervisors who understand the firm. Clearly, from a board perspective, that was an area of focus. How would the organisation work out in the medium to long term, both from a morale perspective—that was another dimension that was raised at the time—and from a stable workforce perspective? Where we are now, I think our current level of turnover is shy of 7%.

Nikhil Rathi: It is 6%. The voluntary turnover is 6.2%, which is, bar the pandemic, the lowest we have ever had.

Ashley Alder: So that is an opportunity, which is already being grasped, to make sure that, from a supervision perspective, the organisation gets better and better, particularly in relation to the day-to-day interaction between firms and supervisors. It is always a bit of a journey to do that, but that is where we want to get to.

Another thing that has been raised with me is about the number of communications—this comes to the question of burden. It rather depends on the circumstances. There are communications between the FCA and the firms, including "Dear CEO" letters and so on. Again, in terms of

operational excellence, that deserves a look, without a doubt. That is the area.

Baroness Bowles of Berkhamsted: I do not think that anybody doubts what you say about thought leaders and the expertise of those at the top level. I think the issue is that, as you get further down below—where a lot of the work is done, including assisting in the writing of rulebooks and other discussions, and in terms of the level of contact that you make with people—there are levels where market issues have not been understood. I have had my own personal experience of that, but it has also been reported to the committee. It would be nice to have the stats on how you are improving at the middle and lower levels, rather than the stats on an excellent upper level that speaks very well, because the delivery is often done below that. One needs incremental improvement.

Nikhil Rathi: That is an important point, which I also hear when I speak to chairs and chief executives, as I do regularly. I am incredibly proud of what our 5,200 colleagues do and deliver every day. I would not want to leave the impression with the committee that, at the senior level of the organisation, we do not stand behind the work of our entire organisation. Those of us at the top take responsibility for everything that they do. It is important to register that point, because our colleagues at the coalface, as it were, often get a lot of this kind of critique.

On statistics, of those with eight-plus years of experience and tenure in the organisation, the number has gone up from 1,200 at the end of 2021 to just over 1,500. The retention rate of our most experienced people is very strong right now.

The Chair: It would be great to have a note on that.

Nikhil Rathi: The Baroness asked me for numbers.

On the other point about not understanding—I have been on the other side of the fence—this is where we need the support of the committee as well. Sometimes, we are asking pokey and difficulty questions. For example, on operational resilience, over a number of years the FCA was saying to firms, "You've got to step up now". In some of the feedback from firms, you do not get what needs to happen. In fact, I do not think it was always the case that the supervisor and the FCA did not understand what needed to happen.

Take the pandemic: because of the work that the FCA did for years prior to the pandemic, we had a completely smooth transition to working from home for the entire UK financial industry, the second-largest global financial centre. That came after painstaking work over a number of years, hassling firms, including dealing with firms that did not want to do what they needed to do to get themselves resilient. That will not be recognised because it is about something that was prevented. But if something had gone very seriously wrong in March 2020, I am sure that we would have been here, or at an equivalent committee, explaining ourselves. Having been on the other side, I think that the FCA was ahead

of the industry in understanding what needed to get done to make sure that the system was resilient operationally and had those kinds of safeguards.

Baroness Bowles of Berkhamsted: I would not dispute the operational resilience. People are not complaining about those issues; they are complaining about an understanding of the way the markets and products actually work. That is the level at which the concern comes. Could you send us some data from that market practitioner level? Operational resilience applies to all companies, and that is a little more general than what I am talking about.

Q336 **Lord Vaux of Harrowden:** On the point of whether the staff have sufficient experience and knowledge, are your pay structures sufficient to attract the right people into the organisation at the lower levels?

Nikhil Rathi: There will always be a lively debate about these issues. As it stands now, we do not have any great difficulty recruiting at an entry level or indeed at a more experienced level. Our pay is always going to be somewhat less competitive than the firms we regulate. I do not think that Parliament would tolerate us matching the likes of the top investment banks or the top asset managers; I do not think we could realistically do so.

A motivation to work in the regulator will be about not only pay—we are at the top end of the public domain with our pay structures and overall benefit structures—but the impactful nature of the work that we do and the sheer professional interest that you get out of solving some of the difficult issues around pensions, operational resilience or supporting growth in the economy.

I am sure that the committee has seen, in the evidence that it has heard, that we are subject to a lot of debate and scrutiny. Some of it is quite lively, some of it is quite vigorous and some of it is from events that have passed. What I say to our colleagues—the whole organisation meets four times a year at a town hall meeting for everybody—is that we absolutely need to match the expectations of us. However, part of the reason we are subject to this scrutiny is because of the impactful nature of the work that we do. People really care about what we do. That is quite a big motivating factor all the way through the organisation.

Q337 **Lord Hollick:** Nikhil, you have made it very clear in the past what your view is of the secondary objective. Personally, I have never been a massive fan of it. You pointed out that you do not think that it is fundamentally necessary for having a strong, successful and dynamic financial sector. You added that the risk that some regulators will have is that every single time they take a decision, it will get challenged on those grounds, and it becomes unclear and confused—a very powerful and important statement.

The Government have now concluded that they want to impose this secondary objective, so you have a cuckoo in the nest. How will you

manage it so that it does not fundamentally complicate, in the way that you described, your main objective? How can you do that and how will you explain to the regulated entities how you will calibrate their decisions in the light of the growth competitiveness? It seems that that would add significant complexity to your role.

Nikhil Rathi: Perhaps what you are citing is something that I said in a pre-appointment hearing before I took up the seat. Parliament has made a decision and, as I said, having sat in the seat for a number of years, I find the objective liberating. The kind of conversation we are having with the Chancellor and Prime Minister now, which you would have seen openly and publicly last week, would not have been possible a few years ago. If you look at the evidence session that the chair and I gave to the Treasury Committee before Christmas, it was a very thorough discussion about this question of risk.

That goes to how I would answer your question: we can see the enormous challenge that the country is facing on growth. It is a very challenging situation for the country not to be generating wealth every year. That is not good for consumers, because consumers in the United Kingdom need growth to generate the returns they need, so that they can have secure retirements and better living standards. There is any number of things that we can do. What we have struggled with in the past is having an open conversation about what the risks may be if we go in a particular direction.

We have had that conversation on listing reform. In March 2023, I made a speech in which I said, "Look, we're going to do this, but one or two more things are going to go wrong here, and not everybody is going to play completely by the rulebook. Is there acceptance of that?". On mortgages, there may be more defaults. Last year, the mortgage charter was introduced because there was an enormous political consensus around not having defaults and repossessions. We were asked—cross-party—to do everything we possibly could, including using our regulatory levers, to keep people in their homes and stop them defaulting.

That will not be compatible with relaxing lending standards, so we want to have a discussion. I have talked about metrics for tolerable failure. This is hard, because economic growth and interest rates affect it, but is there a range that would be seen as broadly politically acceptable in Parliament, for which we could be held to account and which we could explain to you as we went along? Is that acceptable to you?

Money laundering has been a topic of considerable anxiety for firms because of the level of compliance. We are implementing the statute, also inherited from the EU, and we have put out some ideas. We can relax some of these rules around small transactions; some of that might require legislation. If we do that, more money mules may get through the system. We will not be able to stop everything. Again, how do we want to trade off the potential lower compliance cost with the fact that some people might abuse the relaxations that come?

That is how we can embrace this objective: through a really good discussion with you, in this committee, and with others to whom we are accountable. It is also important that, once we get to a relatively good degree of consensus, it endures over time; and that, when the risks crystallise, there is not a sudden reversal of position, with someone asking, "Why did you let that happen?". That then makes the system very difficult to oversee.

Lord Hollick: Thank you for that. We have taken a great deal of evidence from regulated entities. They have identified that among the principal barriers to growth and competitiveness are the slow nature of supervision; the burden on senior managers; the amount of data that has to be collected; the mission creep into behavioural activities; and the way in which the industry is operating. They lay at the door of the FCA a degree of responsibility for the lack of competition in the market. They cited examples of where they decided not to go into certain markets because they saw the regulation as too burdensome; indeed, they might even come out of certain markets for that reason. You will be familiar with all of those. How do you address them? Certainly, for the companies we have heard from, number one on their agenda is a change of behaviour and culture at the FCA. How do you bring that about?

Ashley Alder: Can I kick off on that? Setting aside the important productive finance aspect of what we are doing and all the workstreams that I referred to earlier, we have been really clear that questions around proportionate regulation—that word, "proportionality", comes up time and again—are absolutely valid. The stances absolutely will embrace proportionality in the right places but we are not reverting to light touch, as I said previously.

Again, this boils down to the practicalities—that is, what are we doing practically around this? Importantly, as you are aware, we put out a call for input some months ago. We are now assessing the responses, on a shift from an emphasis on the rulebook to outcomes. That is not a straightforward discussion, and it involves some of the trade-offs that Nikhil referred to earlier, but that is certainly part of this. We have in effect said to industry, when it comes to the body of rules, "What do you think? Do you think we can collectively, as an organisation and an industry, move to an outcomes-based approach to regulation? It would be a shift over time. What risks, concerns and benefits does that give rise to, from your perspective?" That is one part of it.

In other more specific areas, we certainly need to take a step back and, in important areas of activity, to look at whether we have the correct calibration of rules, particularly when it comes to who is interacting with whom. If a wholesaler is interacting with institutional clients, are rules that are applicable to that relationship more like the rules you would normally expect in a consumer relationship, or not? For example, we have been looking at wholesale insurance in the London insurance market in that context.

The other topic that consistently arises, not just in the UK but across all jurisdictions, is the central question of regulators asking for lots of data, much of which will be valid, in order to judge how we regulate firms and assess risk. Some may not be required and may not be used. In that respect, we are working with the Bank of England in particular, but also ourselves, to rationalise data collections, because we know that the burden on firms—the compliance burden in relation to returns—is relatively high everywhere, not just in the UK; it certainly was in my old jurisdiction of Hong Kong. That is the direction of travel.

In relation to the first set of comments, when I arrived in the UK to do this role two years ago, the other aspect was around service levels—in other words, the speed of action by the regulator, particularly around authorisations—but we had a discussion, which I think came up in the discussion around naming proposals, that those are part of a broader reset in the organisation around the way in which enforcement operates in tandem with supervision and authorisations. Part of that is to speed up the process altogether. There is a large body of work within the organisation that is by no means finished; it is directed at this overall question of firm burden and the appropriate level of burden to enable us to do our job effectively, but without—this is really important—slipping into a light-touch approach, to use the phrase again, which can easily result in what we have seen before: uncontained risks arising and threatening the system.

Lord Hollick: I think that people are looking for not a light touch but a more efficient touch of regulation. They feel that this perceived mission creep of getting into more behavioural issues rather than central issues should be resisted. What can you do to convince people, including the companies that we have taken evidence from, and many others, that you will tackle this problem?

Nikhil Rathi: I am glad that you are holding our feet to the fire on this. Operational effectiveness will be one of the four pillars of our next five-year strategy, I think. It is there already because we are a large operational organisation and because how we interface with firms—our responsiveness—is an important part of how the investment climate is perceived here in the UK. We have considerably improved our authorisations performance while maintaining standards at the gateway.

We will go further in terms of digitisation, which requires investments from us but might also require investments from firms. We said in a letter to the Prime Minister that we will launch a machine-readable handbook later this year, which should make compliance with rules easier for those firms that have invested. We anticipate retiring three data returns that we think we no longer need; we will consult on doing that shortly. That should benefit around 16,000 firms.

The flip side to that is that there are some areas where we need more data, including more real-time data. At the capital markets conference we hosted in October, I described the level of volatility we see in markets

these days and the real-time nature of market moves. In August last year, the Nikkei fell 12% in a matter of hours. For some of the hedge funds and others, we need more real-time data, but we need to make sure that the data interface is important.

The other thing I note about some of the feedback you have had is that people sometimes think we are being very bureaucratic in asking difficult questions. We need to be responsive to that feedback but, sometimes, we ask difficult questions for a reason. I think about some of the money laundering responsibilities we had with respect to crypto firms—an area that was seen as a big growth area for fintech and innovation. We had been asked to maintain money laundering standards. The fact of the matter is that our case officers on the ground were asking difficult questions and slowing things down because we were not convinced that these standards were being met. Indeed, we turned down some of the largest firms in the world, which then could not make it through our gateway. FTX is one example that is now public. It was not because we were trying to be anti-innovation or obstructive; we just could not see how they met the threshold that you in Parliament have set for us.

Another example I have heard is attestations. We do not use them very often but, when it comes to data, it is important for us to talk about what we are doing and what we are sometimes asked to do by Parliament. The specific case that one of the committee’s witnesses gave was about payment accounts. We were asked to do some work on the question of freedom of expression. We were asked to examine whether there was evidence that the banking industry was de-banking individual clients because of their political views. We were asked to do that very quickly. We did a survey of the key firms in six weeks. That was a huge data demand on the industry, but the Chancellor at the time requested it from me. We could not find evidence to suggest that there was a systemic problem.

We published that evidence; I think it can be read in the media. That conclusion was not necessarily welcomed by the Ministers in post at the time. There was a very strong narrative that we had gone soft on the banks and that we had not held them to account. Some speculated that collusion was going on, which was not the case at all; we just had not found the evidence.

Then I had to come to Parliament, and I had a responsibility to assure Parliament, to the best of my ability, about we had found. A number of the chief executives of the banks said, quite openly, that they had no evidence that their firm does this, so we asked them to attest it. As I was going to give an assurance to Parliament, I said to the chief executives, “Okay, you're saying this, so just attest it”. They got very concerned about attesting to me before I came to Parliament. Meanwhile, what I was hearing from the Government at the time, and some parliamentarians, is that we had not done a good enough job of holding the banks’ feet to the fire on that.

The mortgage charter is another example. There are huge data requests going in every quarter to banks now on mortgages, over and above what we would have done historically. Again, that was a cross-party request for us. We are doing huge amounts with leasehold insurance commissions and sanctions. It is probably the biggest regulatory burden that we have imposed in the last few years, and we have been doing it at considerable speed. A set of laws were passed here that we then went to implement. People say, "It is the FCA", but we are doing what Parliament has asked us to do—and, quite rightly, at considerable speed.

There is a discussion to be had around all these things. The motor insurance taskforce is another example. It is a manifesto commitment of the new Government, and we have put in a big data request to support the Government and their motor insurance taskforce in relation to the motor insurance industry.

Some of this is because of us and some is due to the system more broadly. Again, having mechanisms, such as this committee, to talk about the right balance is important.

Q338 **Lord Grabiner:** I was not going to ask anything, but your last answer has driven me on. Are you saying that the buck does not stop with the FCA? If so, where does it stop?

Nikhil Rathi: We are part of a system. Some of it is absolutely our responsibility, and we need to be as operationally effective as possible. We run a panel survey that asks a range of questions. It is an independent survey organised jointly with our practitioners, and it includes questions about data, for example. I can give you the statistics about the fixed firms. A third said that they were okay with the data request; they think it is fine. Some 39% said, "Oh, it's a lot, but we understand why". About 30% said that we are too much. We get that feedback and engage with it.

Some of it is on us and some of it is about us having to build our operational effectiveness. We have been doing that year by year. You will see that in our operational metrics. Most of them are now green, relative to where they were a few years ago.

The FCA's work on conduct and integrity can also get into political crosshairs. The nature of those issues, whether it is non-financial misconduct or some of the social policy questions around financial inclusion, engage a much broader interest here in Parliament. We have to be responsive to the democratic mechanisms that are in place about what we should and should not do in that area. Access to cash is another example.

Lord Grabiner: On risk assessment—or risk appetite, I should say—should the buck stop with you, or should it rest with Government?

Nikhil Rathi: One of the reasons we have opened the debate around mortgages, for example, is because it would be very valuable for the

entire system—namely, for the Government, who are of course accountable to Parliament—to give a view on risk appetite.

Lord Grabiner: Do you think that you have not been given that view? Is it not publicly expressed by Government?

Nikhil Rathi: I have previously said that we need to consider the metrics for what an acceptable range of failures is, which I accept is not an easy task. That could include defaults and repossessions. If the numbers were to go up from 1,000 to 2,000 after we had relaxed lending standards, would that be considered an acceptable outcome here in Parliament? Alternatively, would Parliament say to us, "Why on earth have you let it go up by 100%"?

As I said, when the mortgage charter came in last year, pretty much every major party told us to keep repossessions down—and we did. But that is not consistent with relaxing the lending standards. On the other hand, the benefit of that is you could potentially allow a lot more first-time buyers into the market, who are paying very high rents right now. There are positive benefits for the economy, which we should articulate through CBA and so on. Ultimately, however, we need some political discussion on the risk calculus, which needs to stick over time.

Q339 **Lord Lilley:** The secondary objective is to grow not just the financial sector, although that is a very important part, but the economy. I will focus on the latter. Our economy, for most of my lifetime, has had a very low level of net investment. Investment automatically equals net savings, or net savings equal investment. We heard from one important witness that they were asked in Singapore, "What are you doing to increase savings? We want you to increase savings". So what do you think the FCA can do to increase savings for investment? I do not mean savings that are then offset by dissavings by lending to people for consumption.

What are you doing to ensure that investment is, as Lord Eatwell said, in real assets rather than just being at the price of existing assets? That obviously includes going into risky things. I was interested to hear that you thought, when we were discussing increasing risk appetite, that it was about lending to people who cannot afford to repay. We are talking about the appetite for investing in new ventures, which by definition will be risky because they are new and have not been done before. It is not about lending too much to someone to buy a house.

So, first, what could you do to increase net savings in this country? Perhaps you need to go away and think about it. Secondly, what could you do to ensure that it goes into real assets, including risky assets?

Nikhil Rathi: When we were talking about risk appetite, I was citing the mortgages discussion as one aspect, which is obviously important. I talked about economic crime. The question around risk appetite is central to the work that we are doing on capital markets reform and pensions reform. We have set out a proposed revision to the value for money framework for the regulation of pensions, so that the pension funds that

are regulated by us—it is only a subset—can consider the overall return, and not just fees, when they are thinking about value-for-money considerations. That is important because, sometimes, some of the investments you are talking about, be they equities or infrastructure investments, may generate better returns than holding in cash or other such things. We are shifting the regulatory discussion in that direction.

We set ourselves a target—it was a challenging one, particularly given the cost of living challenge—to move savings out of cash. Part of that is about giving people greater confidence about the advice guidance boundary, where we are proposing some far-reaching changes. That is about risk appetite, because what we are saying is: move away from personalised, customised advice, because the industry tells us that that is very expensive to provide. We want to enable the industry to say, "For people like you, this is, broadly speaking, the kind of thing that you should be going for", which could include investments. That will mean that, for some people, it will not be the perfect piece of rounded advice.

Therefore, the risk appetite question for us, again, is: if it works for 95% of the people who take advantage of it, but not for 5%, is that an acceptable overall balance that will withstand scrutiny here in Parliament? That is something else we are doing: we are easing the rules on prospectuses, to enable equity capital to be raised more freely by existing listed companies; and easing the rules on retail bond access, which is debt, to enable retail investors to access retail bonds. There is any number of things that we are trying to do. Some of the issues that you are getting to are about the tax system and some of the incentives that exist there, which are obviously matters for the Treasury.

Q340 **Lord Vaux of Harrowden:** On the point about pensions that you just mentioned and on how you are looking at changing the rules around what they can invest in, we had evidence the other day that TPR has lifted the charge cap on pensions already, but you have not done that. Why is there this difference between the two approaches, and why is it taking you longer to get to the same position as TPR has got to?

Nikhil Rathi: We are working alongside DWP and TPR on this, and it is something that we are open to looking at. But our prioritisation of the work was around the overall value-for-money framework, the consolidation of local authority pension funds and the launch of LTAFs. So there was a sequencing there of the types of things that we would move on.

When we talked to those whom we regulate—we regulate a different cohort—the information we got back from industry was that the charge cap we have was not really a binding constraint, although I acknowledge what you heard from Andy at Phoenix. Most are already operating very significantly below the charge cap, so they have quite a lot of flexibility to move up the food chain before we even think about reform. That is the thrust of what we have heard from the firms we have regulated, which is why we did not think that, in the grand scheme of things, that should be at the top of the queue compared to other things we are doing.

The Chair: On your point about risk appetite where the Government are pressing you to be more ambitious, do you really think that they will stand behind you when things go wrong?

Nikhil Rathi: The Prime Minister and the Chancellor have been clear, and the Chancellor's remit letter that she sent to us at Mansion House was the first time I have seen a Minister put in writing that they recognise that, if you go in this direction, there will be failures and they will stand behind the regulatory system. That is the first time I have seen it explicitly documented. What we are suggesting now is taking it forward: let us have a discussion. There is a lot of discussion around competitiveness metrics, so let us have some discussion around risk metrics. We live in a very adversarial political system—that is public life in the UK, and I make no complaint about that—but hopefully we can have an informed debate that enables us to operate the system as we think the Government and Parliament want us to.

Q341 **Lord Hill of Oareford:** I have a couple of quick questions that follow on from that and other things you have said. On your last point, you said in your letter to the Prime Minister, "Let's look at some metrics on risk". This is not for now—maybe you could write to us—but you must have had in your head some thoughts of what those might be, because otherwise you would not have written to the Prime Minister. It would be helpful to know, because the question of how one can set risk appetite is crucial to this whole debate. So a set of detailed proposals for those might be helpful.

On risk and your theme of the changing risk environment that we are all operating in—you are responding to that—do you think, with the risk environment that we are now in, you would not have published your naming and shaming proposals today, as compared with the climate that existed six or nine months ago when you did?

Nikhil Rathi: Gosh, with 100% hindsight—there is a lively debate about those proposals and, as you know, we had a recommendation from the Public Accounts Committee to move forward—I clearly think we would have done them differently in terms of how the first consultation went. I would still stand behind the rationale for more transparency on our part, particularly in the context of accountability but also because of the consumer protection and other angles we have.

What is also perhaps not always fully digested is the number of unauthorised cases we are dealing with, where we do not have the same powers as we do for regulated firms. Our ability to talk about that is quite important in this very fast-changing risk environment, as is being able to explain to you what we are not doing. One of the challenges for the FCA over the years is that we have a very broad remit. I made a point in the Prime Minister's letter that we also have to have a good understanding with Government around the prioritisation of resources. We will not investigate everything. There are some things where we have to make judgments about what we think is potentially most harmful and risky, and put our resources there.

Sometimes, there is an impression that, if we have intelligence in the organisation or allegations about risk, we have to pursue everything to the nth degree. That is just not realistic with the resources we have. Part of the transparency is also to be able to explain a little why we are not doing certain things as well as what we are doing. So, to go to your question, I would still say that I think it makes sense for us to do it, but we would certainly have done it differently. You will keep pressing me on that.

Lord Hill of Oareford: No, I will not. I take your answer as a "no" or "maybe not". I have a narrow point on metrics and then one other point. You have rightly talked about metrics, but do you have any that you set yourselves on relative costs of compliance in what you do in different markets?

Nikhil Rathi: We publish every year the estimated annual net cost of new rules and regulations. We published that last year for the first time and, actually, it was relatively low. The biggest one was the rules around sustainability disclosures. We then have our practitioner panel survey. As we have talked about, some of the compliance costs are ours directly and some are part of the system in which we operate.

We are getting feedback from the survey about how firms perceive the burden and what they perceive around proportionality. Those are metrics that we track, and those are questions we agree with our practitioner panel. We would like to see those improve. We are unlikely ever to get to a situation where 42,000 firms think we are 100% proportionate—that is probably unrealistic—but we would like to see that improve, and I would like to see the feedback on the burdens around data improve as well.

Lord Hill of Oareford: Do you think you could theoretically do something on relative costs in different markets?

Ashley Alder: That is really hard, and the reason for that is fairly clear: regulatory systems differ hugely. Just look at ourselves and the United States or Singapore, for example.

Lord Hill of Oareford: Firms come to us and say that they can make an estimate of the differential costs in different markets that they have, either through the number of people they employ or the cost that they tot up. I get to the point, in an abstract way, that things are different. Firms clearly think that there are differences in different markets, and they have come to us and said, as you know, that they think the costs in this market are higher than they are in other markets. So they have some sort of simple methodology, and I wonder whether one could extend that.

Nikhil Rathi: One challenge is that, if we were to go and survey that, that would be another massive data request into the industry, which we would have to think about. We have a perception survey. I am conscious that, for example, you had evidence from Marsh that made the specific point about insurance brokers. We have gone away and looked at that

quite closely. Although it has not been in position to give us the detail, it has pointed us to a manifesto published by the British Insurance Brokers' Association, which talked about relative costs of jurisdictions. We were positioned between Bermuda and Singapore—broadly speaking half way in between—and that was particularly during the year of the consumer duty implementation, where I would accept that there was a big regulatory change going on and there was a particular cost that year. I understand that that work is now being updated with an external consultancy. We will absolutely engage on it to understand what the differences are.

That work compared us to an average of 21 jurisdictions, and in a number of jurisdictions the cost of compliance was ranked as zero—maybe that is because firms in those jurisdictions did not respond. So we have to get beneath it to really understand.

When we compare with the US, the thing that I would always note that is a little different for us is that, although they may have lower compliance numbers, the number of lawyers that are defending all kinds of cases—it is a very litigious system there—is of a different order of magnitude to anything we have. So they have a different mindset around how they deal with some of these issues. Most large firms will have multiple channels of litigation going on at any point.

Lord Hill of Oareford: I get that, but if your contention a few moments ago was that trying to set risk metrics for Government is very difficult but worth having a discussion about, should we not, on the same basis, apply that to ourselves and think, "Okay, this is difficult because it's hard to make comparisons, et cetera, but it's worth having that discussion"?

Nikhil Rathi: I think it is worth having the discussion. I just want to make sure, with all these things on metrics, that we articulate our contribution—but there is an overall system-wide issue. Let me give you an example: the new offence on taking reasonable actions to prevent fraud.

Some very detailed guidance has come out of the Home Office—we will play a role in enforcing that—but the actual source of the compliance cost is the Economic Crime and Corporate Transparency Act passed by Parliament and, now, overseen by the Home Office. I just want to be clear that it is not the FCA imposing this and to have a good discussion around it.

The same goes for listing. You will know that we have adjusted the rules in a pretty far-reaching way. However, we have said all the time that it is not just us. It is tax. It is a range of other things, too, that play into some of those costs that people are worried about. As long as we can have a good discussion around all that, I am open to questions.

Lord Hill of Oareford: I have one more question. You talked earlier, on which I agree, about work that could be done to improve clarification and simplification both in terms of the existing regulatory legislative

framework and, perhaps, between different regulators and overlaps. I see that, in the letter he wrote to the Prime Minister, Mr Woods said that the PRA will look at a concierge service for foreign firms. Why did the two of you not talk to each other and say, "Why don't we do this for Britain, for both domestic firms and foreign firms?"?

Nikhil Rathi: We did. We are talking about it. In my letter, there was a section on improving exports and inward investment, where I talked specifically about working with the Government, the City of London Corporation and other regulatory partners on how we can collectively promote the UK together. Sam used the word "concierge", I think. I did not use that specific word in the letter—

Lord Hill of Oareford: This is about the idea of a one-stop shop.

Nikhil Rathi: On the idea of us working with the Office for Investment, just last week, I was at a breakfast with the Minister for Investment. We touched on this idea of us all working together to make sure that we are putting our best foot forward with respect to international investors; that is important. I said in the letter that we are establishing a presence in the US. We will go further and do that in Asia as well, in order to make sure that the senior decision-makers have access and can navigate what can sometimes be a hard organisation to navigate from outside.

So we are absolutely open to that work; indeed, we do quite a lot already. I have spoken on investment management and other issues at conferences in New York hosted by UK trade bodies. We want to be attractive to foreign investors. Part of the attraction, though, includes the challenge that sometimes comes along when a foreign investor thinks that this concierge service means they can get a regulatory waiver or exemption because a Minister really wants the business. To an extent, there is always room for discussion, but one of the reasons why we are so attractive to so many foreign institutions is because we treat everybody fairly and consistently. They know that, wherever you are from, if there is a rulebook out there, we will apply it consistently, and that that then goes through to the courts. You just have to be sensible about how far you go there.

We had some of those challenges with crypto, which I talked about. At the end of the day, I do not think that Parliament would really have wanted us to waive standards on money laundering.

Lord Hill of Oareford: Forgive me, but you are presenting it as a sort of false prospectus. You are setting the argument up a little as though having regulators that try to take overlap and confusion out of the process of being dealt with, if you are either a foreign or domestic company dealing with multiple different regulators—you would agree that that is a good thing, I think—is comparable with saying, "Let's waive standards in order to get you into our market". They are totally different, unrelated issues.

Ashley Alder: This is about appropriate support. Even within the FCA, we have a programme called the pre-application support service; its acronym is PASS. It falls into a similar area in terms of how a regulator can, without crossing into the territory referred to by Nikhil, provide the right sort of constructive support to navigate the system. The concierge service, or whatever word is used, is about enabling firms that may not be used to the system, or may have problems, to navigate the system, as distinct from the question of waivers and such.

Lord Hill of Oareford: I agree. I was only making the point that we had an opportunity there for some regulators to have put a clearly articulated joint position to the Prime Minister, but we did not do so.

The Chair: I am conscious of time, but I want to get three more colleagues in.

Q342 **Lord Lilley:** Can you just confirm something? You said that the biggest single additional regulatory burden you have imposed recently was the sustainability disclosure requirement. I presume that this was imposed by Parliament and that you had to do it. In offering advice to the Chancellor and the Prime Minister, you might suggest removing that burden because, as far as I know, the budget laid down by the Climate Change Committee under the Climate Change Act to reduce our CO_2 emissions does not attribute any benefit to the sustainability disclosure requirements, which are purely about making us all feel good. Could you reduce the burden, meeting the requirements of the Chancellor and so on, and be a bit more in line with the post-Trumpian world?

Nikhil Rathi: It is our job to follow UK law. We were given a "must have regard to", in terms of the Government's policy on net zero, in the legislation passed by Parliament.

Lord Lilley: "Have regard"? You did not really have to do it.

Nikhil Rathi: There was a G20 leaders' agreement around sustainability disclosure. The launch of those standards was done under the UK hosting of the COP summit, here in the United Kingdom a few years ago, and the establishment of a body. The Government are endorsing those standards. In that climate, it is quite hard for us to say that we will not do it when the Government have explicitly agreed it and asked for it.

This goes to the point about some of the legislative architecture and the "have regards". For example, on net zero, we have to have regard to the Secretary of State's policy. Again, it is about having a good, fruitful discussion about what that means; that has changed over time as different Governments have evolved in the UK. At some point, in particular around the COP summit, the direction was clear: "We want the UK to be absolutely out at the front, leading on everything and being the first on everything". That was a very clear political steer.

Lord Lilley: It was a political steer. It was not parliamentary law.

Nikhil Rathi: Having regard to the Secretary of State's policy is parliamentary law. It is in the regulatory principles that we must follow.

The Chair: I am keen that we do not get into the debate on climate change.

Lord Lilley: With respect, it is the FCA that has got into the debate on climate change, by imposing this biggest single additional burden on the financial sector.

The Chair: Indeed; I am talking about this morning. I just make the point, in Lord Lilley's defence, that, when Sam Woods came before the committee, he said that he was looking at the "have regards" he had been given, with a view to perhaps placing less emphasis on them. As I think you can hear, Lord Lilley thinks that you should be placing less emphasis on that particular one, which you have identified as a major cost.

Nikhil Rathi: It was £58 million out of our costs of £78 million last year, implementing an international agreement agreed by the Prime Minister.

Q343 **Baroness Noakes:** You said earlier that you have 5,200 staff in the FCA. Is that correct?

Nikhil Rathi: Yes.

Baroness Noakes: In your July report on the secondary objective, you said that 1,300 staff had undertaken training on it. That leaves three-quarters of your staff with no training on the secondary objective. Can you explain that?

Nikhil Rathi: There are different aspects of our workforce. There will be a significant component of the workforce that is not doing policy, rule-making and supervision work. In particular, a very significant component of our workforce does technology, data, business analysis and so on; the training on the second objective would not be directly relevant to them.

On authorisations, we have a separate training programme on the way in which case officers—around 700 of our colleagues—work. This has manifested itself in significantly better performance in terms of the speed of authorisation. The colleagues who will be most engaged on this objective are the ones who had the bespoke training, but there is a range of different training programmes covering all of the objectives for the whole organisation.

Baroness Noakes: What is your approach to training for those involved in compliance?

Nikhil Rathi: The supervision teams were part of that training programme.

Baroness Noakes: Okay. When the Chancellor of the Exchequer sent her remit letter to you late last year, she made a specific point of asking

you to ensure that the secondary competitive and growth objective was firmly in your approach to supervision and the experience of firms in their interactions with the FCA. I do not think you replied to that aspect of it when you replied to her. Could you explain how you ensure that those of your staff who are involved in supervision and interaction with firms understand what the secondary competitive growth objective means to them?

Nikhil Rathi: There is the training that we have talked about. Also, in most of the town halls we do, we talk about the growth objective quite openly. Our letter to the Prime Minister circulated around the whole organisation and cascaded through the different leadership teams. The survey data that we get from the practitioner panel, which focuses on things that are going well but also the supervisory feedback that is more challenging for us, such as around data requests and timeliness, all feeds back into the organisation and leadership teams for people to respond to. Then, after specific pieces of work, surveys go out to the firms that are involved in those specific thematic pieces of work so that we can understand anything we could have done differently or better. We also have operational metrics around the speed of response and the level of our caseloads in different phases of supervision, all of which we track against ambitions to make sure that we are getting those in the right place.

Baroness Noakes: We have had evidence that those firms being supervised do not feel that the staff with whom they are engaging understand the secondary competitive and growth objective, or indeed that those staff have any interest in the broader context in which those firms operate, namely as part of the growth engine of the economy and part of the successful financial services sector in the UK.

Nikhil Rathi: I recognise that there will be a range of feedback, and that the committee has received a range of feedback. I point to the survey that we published, which, as I said, had feedback from 8,000 firms; there was around a 40% response rate. Around 84% of the fixed firms said they believe the FCA enhances the UK’s reputation as a financial centre, and 73% of flexible firms, which is a significant increase on last year, and 97% felt that we were doing a good job at protecting the integrity of UK financial markets.

There were lower scores, I would agree, on competition, which is a separate objective to competitiveness. This survey was run about six months after the objective came into force in August. We have published our first report and our response to the Chancellor and to the Prime Minister, and we have done significant other things such as our consumer duty call for input to talk to the industry about what rules we could streamline or remove. I hope that there will be a steady improvement in those scores year on year, and we will report to the committee on that.

The Chair: Were these anonymous surveys?

Nikhil Rathi: Yes.

Q344 **Lord Vaux of Harrowden:** I want to go back to the proportionality question, if I may. We have had quite a number of comments through this process around whether the FCA appropriately differentiates between wholesale and retail businesses, and even suggestions that the regulation of those two could be separated and split. What are your reflections on whether you are getting the balance right between wholesale and retail and how you regulate them, and whether some form of separation might make any sense?

Ashley Alder: Fundamentally, I do not believe that it would. If you look at, for example, large insurers, who will be regulated by the FCA, they will operate businesses which are an integrated mix of wholesale and retail, and those businesses would expect to face a single regulator in relation to both activities, frankly, rather than, for example, two regulators with this rather artificial split between the two.

If we go back some years to around the time of the financial crisis, what did we see? To an extent, we saw a subprime activity, which was retail, translated into wholesale activity en masse, which was securitisation and other techniques in order to pick up on subprime from a wholesale perspective. We saw what happened in relation to the effect on the global economy, and especially on some economies. Separating out the wholesale from the retail in practice is very artificial.

On the question about skills in the organisation, I will pull back a bit. What I see as chair, when I go around the organisation and talk to people at various levels, is a very high level of expertise right through the organisation. On Nikhil's point about firms' experiences of supervisors, there will be occasions, not infrequently, when a firm will find that the questions being asked by the supervisor are not welcome, because they are attached to significant problems in the firms. You will find that in the United States and in the European context. From a board perspective, that is always what we want them to do.

Going back to the wholesale and retail point, if you look at different regulatory set-ups around the world, it is a pick and mix. Would you really want to replicate the United States? It has the SEC, as well as a non-financial derivatives regulator, to an extent, with the CFTC, and a whole host of insurance regulators. By contrast, Singapore has a single regulator. Where I operated, there are the securities regulator and the insurance regulator. By and large, in all those places, there is not a decision to separate wholesale from consumer, because it is recognised that they interact, and that the interaction is so close.

Lord Vaux of Harrowden: I understand. Separating them and supervising them independently is probably a step too far, but do you think that you get the balance right between the supervision of businesses that are primarily or 100% wholesale and the supervision of those that are much more consumer-facing?

Ashley Alder: The way in which we describe publicly what we do around the wholesale piece is probably eclipsed by what we describe, and what we are expected to describe, from a consumer perspective. That is the environment in which we operate. What we actually do in the wholesale area is extensive and sophisticated.

Your question about whether we get the balance right is to do with the previous question of proportionality. I referred earlier, by way of example, to wholesale insurance. Do we have the balance right, in relation to the rulebook, when it comes to the size of transactions and the type of counterparties or clients that are involved in that market? Are there rules that exist in that context that are disproportionate to the risks that operate when you have very sophisticated operators on both sides of the ledger, as it were? We are conscious of this issue and are examining it, but we are doing so in that context.

Nikhil Rathi: The consumer work gets the most public and parliamentary attention. A few years ago, the general thrust of the feedback we were getting was that we were not doing enough on the consumer protection objective. There would be independent reviews and other things that we needed to step up on, and which we have done year by year. That does not mean that the wholesale market work has not had attention. A vast range of reforms have gone through, but they do not get public attention in the same way.

The risk discussion is applicable to wholesale markets as well as to retail markets. With the prospectus reform we are putting through, we are proposing a very radical change. It will enable companies which are already listed to raise new capital, up to 75% of their existing issued share capital, without a prospectus. It is fascinating to see the pushback we are getting from wholesale sell-side firms on that. It is a flip of the pushback we got on the listing rules, when the investors were cautious while the sell side wanted it. Now, the sell side is saying, "Oh, we're worried about the legal risk that might attach to our underwriting committee. They'll keep it at 25% or 30%". Some of the discussion about risk is not just from us; there is a cultural shift—but we are trying to lead that and trigger the debate right across the system. That is the case for both wholesale and retail.

On retail, the debate moves over time to the vexing question of where you draw the boundary. This is particularly applicable to the subject of small businesses. At what point is a business large enough that it no longer needs the protection of the financial regulator and should be allowed to negotiate its own terms with its financial services providers, be it a bank or an insurance company? The Federation of Small Businesses feels that we should be giving far more protection than we do. It is sharply critical that we are not intervening further with the banks on things such as personal guarantees for lending to limited companies. Limited company lending is outside the regulatory perimeter. Parliament has not decided to put that in the regulatory perimeter, so we do not move in that area.

When it came to the business interruption insurance case at the Supreme Court during the pandemic, we ended up intervening to support the contractual compliance of insurance firms with businesses that were very large, actually—£40 million or £50 million turnover. You might think they are wholesale, but they were saying that they did not have the wherewithal to take on the insurers themselves. There were a lot of small businesses that we are acting on behalf of, but we were acting for businesses of very significant size too. Of course, the Treasury Committee has suggested that we potentially raise the threshold further of the small businesses that qualify for FOS adjudication too.

Part of this is about where we think the boundary is and whether that will stick. That means that companies, once they get to a certain size, then do not have our protection. Different people have different views on that over time.

Ashley Alder: In terms of trade-offs, very briefly in the debate about wholesale or retail, Nikhil referred to listing reforms and prospectives and suchlike. That may be characterised as wholesale but, clearly, when that interacts with a different form of advice that may result in more people investing personal savings, that tracks right through to the retail perspective.

Q345 **Baroness Donaghy:** I have one small question and one "three wishes" question. My small question is: do you think you should have more power over the FOS? On my larger question, I appreciate that change management is tricky at the best of times, particularly when you are in the political and public spotlight; you are walking a tightrope and it is quite difficult to please all the parties. If you had three wishes to assist you to get to the other end of the tightrope, what would they be? Would they be about the Government watching your back, simplifying your role, more stability in the political arena—you have talked about chopping and changing? What would your priorities be?

Ashley Alder: My wish, as Nikhil expressed and I totally agree, is that, interestingly, we see the debate that is happening now. The secondary objective came into law quite a while ago now. The discussion around risk in the system and the intersection between what regulators do and growth is a real opportunity, after a long history of, frankly, the FCA being pushed in all sorts of different directions with a whole series of external expectations as to what it is meant and expected to deliver, which often contradicted each other. We have an opportunity, with a healthy debate at the moment, to reach a landing zone—not tomorrow, but certainly in the medium term—as to what the FCA represents and how it functions.

That is how we are putting together our five-year strategy. It is around that sort of concept. In a sense, the strategy is a lot simpler than the strategy that you may have seen and other discussions about trade-offs and suchlike. Basically, it boils down to financial crime—we absolutely see that as an area where it is vital for us to double down, not least because it relates to growth and confidence in the system. Confidence obviously

intersects with growth. Growth and innovation is one of the four pillars. We have done that deliberately, to make sure that we can again achieve a level of societal and political consensus about where we are at, particularly when it comes to the sort of trade-offs that we are talking about.

Consumer resilience is also an important pillar. As a slight reset to the question of "What resources, products and services should consumers have available to them to enable them to participate in the economy in a way that both benefits them and enables them to have choice"—depending on aspects of vulnerability and suchlike; there is a degree of responsibility around this—"but is also relevant to the question of investment?" I mean the sort of investment we were talking about: investment in the economy.

Those are some of the dimensions of our strategy, that then goes to this conversation. Really importantly, in Nikhil's letter to the Prime Minister we have deliberately moved to an extent from, "Okay, these are the expectations. What does it mean in practice, both in terms of productive investment and otherwise?" Getting a landing zone there is a single wish, I suppose.

The Chair: Nikhil, we are dying to know what your three wishes are which Baroness Donaghy has granted you.

Nikhil Rathi: I thought Christmas was over.

Lord Hill of Oareford: And also the FOS.

Nikhil Rathi: The FOS? I do not think we would want to be getting involved in individual cases; that might be going too far. Mechanisms to ensure that we can have clearer alignment on issues that have significant market impact are, I think, the subject of debate and consultation. Some we can do ourselves, and some may require legislation. That is my starting position, but that is a discussion with the Treasury.

I am grateful to Ashley for going first. It has given me a bit of time to think about what the three things may be.

Ashley Alder: That is why I did it.

Nikhil Rathi: The Government have sought to change the terms of the debate around regulators. For a long time, it has been seen as a bit of an adversarial relationship and that we are somehow trying to hold everything back. We had a little bit of that just now, Lord Hill, on the exchange around the Office for Investment. Actually, we are and should be absolutely central to the system's coherence that supports growth and investment in the economy. Therefore, if we have good early engagement we can really think about the hard, long-term changes that we need to make. Some of these are quite foundational things—on our digital infrastructure, on our pensions system, on the risk appetite. Then we can be transparent about it and work together. That includes the

Office for Investment and making sure we put our common face forward internationally.

Secondly—and unrealistic—around the political environment, time consistency is important. We talked about climate change, and I do not want to re-engage Lord Lilley on the topic, but obviously the steer from different Prime Ministers over the last few years has evolved as to what is expected from us. That topic in and of itself is very long-term, so when you start making changes—chopping and shifting it—it can be quite challenging. It can be quite costly for the industry. That long-term, time-consistent view is important.

Finally, I wish for a fair hearing in discussions like this, with the committee. We had a very rich debate before Christmas with the Treasury Committee in this accountability forum, which of course holds our feet to the fire but enables us to explain to you some of the choices. As for some of the competitiveness feedback that you will get from the industry, we are trying to take a view about what is right for the UK as a whole. I see this now in open banking and fintech, for example. The big tech firms have a different view to the banks, which have a different view to the fintechs. Whatever we do there, somebody is going to come to you and say that we are damaging their competitiveness. We need a mechanism to explain to you why we have made whatever choice we end up making on some of the rules. We are not going to be able to satisfy all those different commercial interests. So a fair hearing like this is very valuable.

The Chair: I am sure that the committee will be very pleased to grant you your third wish; I am not sure about the first two. Thank you very much indeed. That has been quite a long session but a very useful one. We are very grateful to you for the clarity of the answers that you have given—it has been very helpful—and are looking forward to producing our first report, which is on naming and shaming, shortly.